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CENTRAL DISTRICT OF CALIFORNIA  
BY DEPUTY

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

CV 04-1490 RSWL (CJX)

21 UNITED STATES OF AMERICA, et al.,  
22 Plaintiffs,  
23 v.  
24 ADAMS FAMILY TRUST, et al.,  
25 Defendants.

CIVIL ACTION NO. \_\_\_\_\_  
CONSENT DECREE

APR 21 2004

7

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1 I. BACKGROUND

2 A. The United States of America ("United States"), on behalf of the Administrator of  
3 the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter  
4 pursuant to Sections 106 and 107 of the Comprehensive Environmental Response,  
5 Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607, and Section 7003 of  
6 the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973.

7 B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs  
8 incurred by EPA and the Department of Justice for response actions at the El Monte Operable  
9 Unit of the San Gabriel Valley Area 1 Superfund Site in El Monte, Los Angeles County,  
10 California, together with accrued interest; and (2) performance of studies and response work by  
11 the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as  
12 amended) ("NCP").

13 C. The State of California ("State"), on behalf of the State Department of Toxic  
14 Substances Control ("DTSC"), also filed a complaint in this matter pursuant to Section 107 of  
15 CERCLA, 42 U.S.C. § 9607. DTSC in its complaint seeks judgment against all defendants,  
16 jointly and severally, for all costs incurred by DTSC including legal expenses and interest, in  
17 connection with a release or threatened release of hazardous substances at the El Monte Operable  
18 Unit of the San Gabriel Valley Superfund Sites. DTSC also seeks declaratory judgment pursuant  
19 to § 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that the defendants, jointly and severally, are  
20 liable for all future response costs to be incurred by DTSC at this site.

21 D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA  
22 notified the United States Department of the Interior and the National Oceanic & Atmospheric  
23 Administration, federal natural resource trustees, on July 12, 2001 of negotiations with  
24 potentially responsible parties regarding the release of hazardous substances that may have  
25 resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s)  
26 to participate in the negotiation of this Consent Decree.

27 E. Settling Defendants do not admit any liability to the Plaintiffs arising out of the  
28 transactions or occurrences alleged in the complaint, nor do they admit that the release or

1 threatened release of hazardous substances at or from the Site constitutes an imminent or  
2 substantial endangerment to the public health or welfare or the environment.

3 F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on  
4 the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the  
5 Federal Register on October 15, 1984, 49 Fed. Reg. 40320.

6 G. In response to a release or a substantial threat of a release of a hazardous  
7 substance(s) at or from the Site, a group of potentially responsible parties commenced in March  
8 1995, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R.  
9 § 300.430.

10 H. The group completed the Remedial Investigation Report in April 1998 and the  
11 Feasibility Study Report in July 1998.

12 I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of  
13 the completion of the Feasibility Study and of the proposed plan for remedial action in October  
14 1998, in a major local newspaper of general circulation. EPA provided an opportunity for  
15 written and oral comments from the public on the proposed plan for remedial action and  
16 conducted a public meeting to discuss the proposed plan in November 1998. A copy of the  
17 transcript of the public meeting is available to the public as part of the administrative record upon  
18 which the Regional Administrator based the selection of the response action.

19 J. On July 12, 2001, EPA sent special notice letters in accordance with Section 122  
20 of CERCLA to the Settling Defendants as well as other potentially responsible parties ("PRPs").  
21 These special notice letters solicited a good faith offer from the PRPs to implement the remedial  
22 design and remedial action for the Site. The list of recipients of the special notice letters is  
23 attached hereto as Appendix I. EPA considers the PRPs, other than the Settling Defendants,  
24 listed in Appendix F to be recalcitrant parties that have failed to cooperate with EPA.

25 K. The decision by EPA on the interim remedial action to be implemented at the Site  
26 is embodied in an Interim Record of Decision ("IROD"), executed on June 23, 1999, on which  
27 DTSC has given its concurrence. The IROD includes a responsiveness summary to the public  
28 comments. Notice of the final plan was published in accordance with Section 117(b) of

1 CERCLA. In August 2002, EPA issued an Explanation of Significant Differences ("ESD")  
2 modifying the IROD.

3 L. Based on the information presently available to EPA and DTSC, EPA and DTSC  
4 believe that the Work will be properly and promptly conducted by the Performing Settling  
5 Defendants if conducted in accordance with the requirements of this Consent Decree and its  
6 appendices.

7 M. This Consent Decree provides for performance of the entire remedy selected in the  
8 IROD and ESD. The Settling Defendants have reached an agreement among themselves,  
9 separate from this Consent Decree, on an allocation of certain obligations imposed by this  
10 Consent Decree. The United States, to facilitate settlement of potential contribution claims  
11 among the Settling Defendants and to expedite the implementation of the Remedial Action  
12 selected in the IROD and ESD, has agreed to terms in this Consent Decree that implement the  
13 Settling Defendants' allocation. The United States does not, however, waive its position that the  
14 harm at the Site is not divisible and that the Settling Defendants' liability is not apportionable.

15 N. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action  
16 selected by the IROD, as supplemented by the ESD, and the Work to be performed by the  
17 Performing Settling Defendants shall constitute a response action taken or ordered by the  
18 President.

19 O. The United States has reviewed the financial information submitted by the  
20 Ability-to-Pay Settling Defendants to determine whether the Ability-to-Pay Settling Defendants  
21 are financially able to pay response costs incurred and to be incurred at the Site. Based upon this  
22 financial information, the United States has determined that the Ability-to-Pay Settling  
23 Defendants are able to pay the amounts required under this Consent Decree.

24 P. The Parties recognize, and the Court by entering this Consent Decree finds, that  
25 this Consent Decree has been negotiated by the Parties in good faith and implementation of this  
26 Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated  
27 litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public  
28 interest.

1 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

2 II. JURISDICTION

3 1. This Court has jurisdiction over the subject matter of this action pursuant to 28  
4 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, 9613(b), and 6973. This Court also has  
5 personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent  
6 Decree and the underlying complaint, Settling Defendants waive all objections and defenses that  
7 they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall  
8 not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce  
9 this Consent Decree.

10 III. PARTIES BOUND

11 2. This Consent Decree applies to and is binding upon the United States, DTSC, and  
12 upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or  
13 corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real  
14 or personal property, shall in no way alter such Settling Defendant's responsibilities under this  
15 Consent Decree.

16 3. Performing Settling Defendant(s) shall provide a copy of this Consent Decree to  
17 each contractor hired to perform the Work required by this Consent Decree and to each person  
18 representing any Performing Settling Defendant with respect to the Site or the Work and shall  
19 condition all contracts entered into hereunder upon performance of the Work in conformity with  
20 the terms of this Consent Decree. Performing Settling Defendant(s) or their contractors shall  
21 provide written notice of the Consent Decree to all subcontractors hired to perform any portion of  
22 the Work required by this Consent Decree. Performing Settling Defendant(s) shall nonetheless  
23 be responsible for ensuring that their respective contractors and subcontractors perform the Work  
24 contemplated herein in accordance with this Consent Decree. With regard to the activities  
25 undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed  
26 to be in a contractual relationship with the respective Performing Settling Defendant(s) within  
27 the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

28

1 IV. DEFINITIONS

2 4. Unless otherwise expressly provided herein, terms used in this Consent Decree  
3 that are defined in CERCLA or in regulations promulgated under CERCLA shall have the  
4 meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are  
5 used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the  
6 following definitions shall apply:

7 "Ability-to-Pay Settling Defendants" shall mean those Settling Defendants identified in  
8 Appendix F (List of Settling Defendants and Defendant Subgroups) as Ability-to-Pay Settling  
9 Defendants.

10 "Basin-wide Response Costs" shall mean costs, including but not limited to direct and  
11 indirect costs, including accrued Interest, that the United States or the DTSC has paid or in the  
12 future pays for basin-wide (non-operable unit) response actions in connection with the San  
13 Gabriel Valley Superfund Sites, Areas 1 – 4, that have been, or in the future are, allocated to the  
14 Site.

15 "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and  
16 Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

17 "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto  
18 (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this  
19 Decree shall control.

20 "Contributing Settling Defendants" shall mean those Settling Defendants identified in  
21 Appendix F (List of Settling Defendants and Defendant Subgroups) as Contributing Settling  
22 Defendants.

23 "Day" shall mean a calendar day unless expressly stated to be a Working Day. "Working  
24 Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any  
25 period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday,  
26 or Federal holiday, the period shall run until the close of business of the next Working Day.

27 "DTSC" shall mean the California Department of Toxic Substances Control and any  
28 successor departments or agencies.

1 "DTSC Past Response Costs" shall mean all costs, including but not limited to direct and  
2 indirect costs and all past Basin-Wide Response Costs, together with accrued Interest, that  
3 DTSC, and the State on behalf of DTSC, have paid through June 30, 2003, in response to the  
4 release or threatened release of hazardous substances at or in connection with the Site, but not  
5 including amounts reimbursed to DTSC by EPA.

6 "DTSC Future Response Costs" shall mean all costs that are incurred by DTSC for  
7 response actions with respect to the Site after June 30, 2003, including, but not limited to, direct  
8 and indirect costs that DTSC incurs in reviewing or developing plans, reports and other items  
9 pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or  
10 enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel  
11 costs, and laboratory costs. DTSC Future Response Costs shall not include any Basin-Wide  
12 response Costs.

13 "East Side Future Response Costs" shall mean those Future Response Costs and DTSC  
14 Future Response Costs associated with the East Side Work.

15 "East Side Performing Settling Defendant(s)" shall mean those Parties identified in  
16 Appendix F (List of Defendants and Defendant Subgroups) as East Side Performing Settling  
17 Defendant(s).

18 "East Side SOW" shall mean the RD/RA statement of work for implementation of the  
19 Remedial Design, Remedial Action and Operation and Maintenance at the Eastern Shallow and  
20 South East Deep Portions at the Site, as set forth in Appendix C and any modifications made in  
21 accordance with this Decree.

22 "East Side Work" shall mean the East Side Shallow and South East Deep remedies,  
23 described in the Eastside SOW. The East Side Work includes all requirements of this Decree  
24 associated with such Work.

25 "Effective Date" shall be the effective date of this Consent Decree as provided in  
26 Paragraph 116.

27 "EPA" shall mean the United States Environmental Protection Agency and any successor  
28 departments or agencies of the United States.



1 "Explanation of Significant Differences" or "ESD" shall mean the Explanation of  
2 Significant differences relating to the Site issued by EPA in August 2002. The ESD is attached as  
3 Appendix B.

4 "Future Response Costs" shall mean all costs that are incurred by the United States for  
5 response actions with respect to the Site after the Effective Date, including, but not limited to,  
6 direct and indirect costs that the United States incurs in reviewing or developing plans, reports  
7 and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing,  
8 overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs,  
9 contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX  
10 (including, but not limited to, the cost of attorney time and any monies paid to secure access),  
11 XV, and Paragraph 95 ("Work Takeover") of Section XXI. Future Response Costs shall not  
12 include any Basin-Wide response Costs.

13 "IROD" shall mean the Interim Record of Decision relating to the El Monte Operable  
14 Unit of the San Gabriel Valley Superfund Sites signed on June 23, 1999 by the Regional  
15 Administrator, EPA Region 9, or his/her delegate, and all attachments thereto. The IROD is  
16 attached as Appendix A.

17 "Interest," shall mean interest at the rate specified for interest on investments of the EPA  
18 Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on  
19 October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest  
20 shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change  
21 on October 1 of each year.

22 "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous  
23 Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42  
24 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

25 "Operation and Maintenance" or "O & M" shall mean all activities required to maintain  
26 the effectiveness of the Remedial Action as required, respectively, under the East Side and the  
27 West Side Operation and Maintenance Plans approved or developed by EPA pursuant to this  
28 Consent Decree and the applicable SOW.

1           “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral  
2 or an upper case letter.

3           “Parties” shall mean the United States, DTSC, and the Settling Defendants.

4           “Past Response Costs” shall mean all costs, including, but not limited to, direct and  
5 indirect costs, that the United States incurred for response actions in connection with the Site,  
6 and all past Basin-Wide Response Costs, occurring prior to and including the Effective Date.

7           “Performance Standards” shall have the same meaning as “Performance Criteria,” as that  
8 term is utilized in Section 11.1 of the IROD, as supplemented by the ESD.

9           “Performing Settling Defendant(s)” shall mean, with respect to the East Side Work, the  
10 East Side Performing Settling Defendant(s); and with respect to the West Side Work, the West  
11 Side Performing Settling Defendant. Notwithstanding that provisions of this Consent Decree  
12 refer to “Performing Settling Defendant(s),” those provisions are intended to and shall be  
13 implemented separately with respect to the East Side Work and the West Side Work and shall be  
14 read as if they referred separately to the East Side Performing Settling Defendant(s) or the West  
15 Side Performing Settling Defendant, as applicable.

16           “Plaintiffs” shall mean the United States and DTSC.

17           “Project Coordinator” shall mean the persons designated by East Side Performing  
18 Settling Defendants and West Side Performing Settling Defendant, respectively, pursuant to  
19 Section XII hereof.

20           “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et*  
21 *seq.* (also known as the Resource Conservation and Recovery Act).

22           “Remedial Action” shall mean those activities, except for Operation and Maintenance, to  
23 be undertaken by Performing Settling Defendant(s) to implement the IROD, as supplemented by  
24 the ESD, in accordance with the applicable SOW and the applicable final Remedial Design/  
25 Remedial Action Work Plan and other plans approved by EPA.

26           “Remedial Design/Remedial Action (RD/RA) Work Plan” or “RD/RA Work Plan” shall  
27 mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by  
28 EPA with respect to, respectively, the East Side Work and the West Side Work, and any

1 amendments thereto.

2 "Remedial Design" shall mean those activities to be undertaken by Performing Settling  
3 Defendant(s) to develop the final plans and specifications for the Remedial Action pursuant to  
4 the Remedial Design Work Plan.

5 "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

6 "Settling Defendants" shall mean all those Parties identified as "Settling Defendants" in  
7 Appendix F (Lists of Defendants) and, unless otherwise specifically excluded in this Consent  
8 Decree, (i) where the Settling Defendant is a corporate entity, its officers, directors and  
9 shareholders acting in their capacity as such, and corporate predecessors, successors and  
10 parent(s), (ii) where the Settling Defendant is a partnership, its partners, (iii) where the Settling  
11 Defendant is an individual, that individual's heirs, and (iv) where the Settling Defendant is a  
12 trust, that trust's trustees and beneficiaries, but only to the extent that any person or entity within  
13 categories (i), (ii), (iii) or (iv) above has no independent liability for the Site other than the  
14 liability derived from that person's or entity's relationship to or affiliation with the Settling  
15 Defendant, as specified.

16 "Site" shall mean the El Monte Operable Unit of the San Gabriel Valley Area 1  
17 Superfund Site, in El Monte, Los Angeles County, California and depicted generally on the map  
18 attached as Appendix E.

19 "State" shall mean the California Department of Toxic Substances Control ("DTSC").

20 "Statement of Work" or "SOW" shall mean the East Side SOW with respect to the East  
21 Side Work and the West Side SOW with respect to the West Side Work.

22 "Supervising Contractor" shall mean the respective principal contractor retained by each  
23 of the Performing Settling Defendant(s) to supervise and direct the implementation of the Work  
24 under this Consent Decree.

25 "United States" shall mean the United States of America.

26 "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of  
27 CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42  
28 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C.

1 § 6903(27); and (4) any "hazardous material" under the California Hazardous Waste Control Act  
2 Section 25100 *et seq.*

3 "West Side Future Response Costs" shall mean those Future Response Costs and DTSC  
4 Future Response Costs associated with the West Side Work.

5 "West Side Performing Settling Defendant" shall mean Hermetic Seal Corporation.

6 "West Side SOW" shall mean the RD/RA statement of work for the implementation of  
7 the Remedial Design, Remedial Action, and Operation and Maintenance at the Western Shallow  
8 and Northwestern Deep Portions at the Site, as set forth in Appendix D and any modifications  
9 made in accordance with this Decree.

10 "West Side Work" shall mean the West Shallow and Northwest Deep remedies, described  
11 in the Westside SOW. The West Side Work includes all requirements of this Consent Decree  
12 associated with such Work.

13 "Work" shall mean all activities Performing Settling Defendant(s) are respectively  
14 required to perform under this Consent Decree, except those required by Section XXV  
15 (Retention of Records). "Work" shall mean the East Side Work with respect to the East Side  
16 Performing Settling Defendant(s) and the West Side Work with respect to the West Side  
17 Performing Settling Defendant.

#### 18 V. GENERAL PROVISIONS

19 5. Objectives of the Parties. The objectives of the Parties in entering into this  
20 Consent Decree are to protect public health and welfare and the environment at the Site by the  
21 design and implementation of response actions at the Site by Performing Settling Defendant(s),  
22 to reimburse response costs of the Plaintiffs, and to resolve the claims of Plaintiffs set forth in the  
23 Complaint against Settling Defendants as provided in this Consent Decree.

#### 24 6. Commitments by Settling Defendants.

25 a. Performing Settling Defendant(s) shall finance and perform the Work in  
26 accordance with this Consent Decree, the IROD (as supplemented by the ESD), the SOW, and all  
27 work plans and other plans, standards, specifications, and schedules set forth herein or developed  
28 by Performing Settling Defendant(s) and approved by EPA pursuant to this Consent Decree.

1 Performing Settling Defendant(s) shall also reimburse the United States and DTSC for their  
2 respective Past Response Costs and Future Response Costs as provided in this Consent Decree;  
3 provided, however, that any failure or refusal by the West Side Performing Settling Defendant to  
4 comply with this Consent Decree or to pay West Side Past or Future Response Costs shall not  
5 require East Side Performing Settling Defendants to perform the West Side Work or to pay West  
6 Side Past or Future Response Costs; and any failure or refusal by the East Side Performing  
7 Settling Defendant to comply with this Consent Decree or to pay East Side Past or Future  
8 Response Costs shall not require West Side Performing Settling Defendant to perform the East  
9 Side Work or to pay East Side Past or Future Response Costs.

10           b. Performing Settling Defendant(s)' obligations under this Decree shall be  
11 independent of and unaffected by any nonperformance by Contributing Settling Defendants or  
12 Ability-to-Pay Settling Defendants and shall remain in full force and effect regardless of whether  
13 Contributing Settling Defendants or Ability-to-Pay Settling Defendants have complied with their  
14 obligations under this Decree. The respective obligations of the East Side Performing Settling  
15 Defendants and the West Side Performing Settling Defendant under this Decree shall be  
16 independent of and unaffected by any nonperformance by the other subgroup of Performing  
17 Settling Defendant(s) of their obligation under this Decree and shall remain in full force and  
18 effect regardless whether such other subgroup has complied with its obligations under this  
19 Decree.

20           c. Contributing Settling Defendants shall make payments to Performing  
21 Settling Defendant(s) in accordance with Appendix H. Evidence of payment of these required  
22 amounts by Contributing Settling Defendants shall be provided to EPA by either the relevant  
23 Performing Settling Defendant receiving such amount(s) or any escrow agent charged by any  
24 group of Contributing Settling Defendants to transfer such amount(s) to a Performing Settling  
25 Defendant. At such time as a Performing Settling Defendant or escrow agent provides such  
26 evidence of payment by one or more of the Contributing Settling Defendants of all monies  
27 necessary to satisfy their obligations to the relevant Performing Settling Defendant, such  
28 Contributing Settling Defendant(s) shall have no further payment obligations under this Consent

1 Decree except as otherwise specifically set forth in this Decree.

2 d. At such time as the Ability-to-Pay Settling Defendants have paid EPA all  
3 monies necessary to satisfy their obligations pursuant to Paragraph 54, the Ability-to-Pay  
4 Settling Defendants shall have no further obligations under this Consent Decree except as  
5 otherwise specifically set forth in this Decree.

6 7. Compliance With Applicable Law. All activities undertaken by Performing  
7 Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the  
8 requirements of all applicable federal and state laws and regulations. Performing Settling  
9 Defendant(s) must also comply with all applicable or relevant and appropriate requirements of all  
10 Federal and state environmental laws as set forth in the IROD, ESD, and the SOW. The  
11 activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to  
12 be consistent with the NCP.

13 8. Permits.

14 a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the  
15 NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e.,  
16 within the areal extent of contamination or in very close proximity to the contamination and  
17 necessary for implementation of the Work). Where any portion of the Work that is not on-site  
18 requires a federal or state permit or approval, Performing Settling Defendant(s) shall submit  
19 timely and complete applications and take all other actions necessary to obtain all such permits  
20 or approvals.

21 b. Performing Settling Defendant(s) may seek relief under the provisions of  
22 Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the  
23 Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the  
24 Work.

25 c. This Consent Decree is not, and shall not be construed to be, a permit  
26 issued pursuant to any federal or state statute or regulation.

27 9. Intentionally Blank.

28

1 VI. PERFORMANCE OF THE WORK BY PERFORMING SETTLING DEFENDANT(S)

2 10. Selection of Supervising Contractor.

3 a. All aspects of the Work to be performed by Performing Settling  
4 Defendant(s) pursuant to Sections VI (Performance of the Work by Performing Settling  
5 Defendant(s)), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis),  
6 and XV (Emergency Response) of this Consent Decree shall be under the direction and  
7 supervision of the respective Supervising Contractor(s), the selection of which shall be subject to  
8 disapproval by EPA. Within 90 days after the lodging of this Consent Decree, Performing  
9 Settling Defendant(s) shall notify EPA in writing of the name, title, and qualifications of any  
10 contractor proposed to be the Supervising Contractor(s). With respect to any contractor proposed  
11 to be a Supervising Contractor, the respective Performing Settling Defendant shall demonstrate  
12 that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994,  
13 "Specifications and Guidelines for Quality Systems for Environmental Data Collection and  
14 Environmental Technology Programs," (American National Standard, January 5, 1995), by  
15 submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP  
16 should be prepared in accordance with "EPA Requirements for Quality Management Plans  
17 (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by  
18 EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time  
19 thereafter, a Performing Settling Defendant proposes to change its Supervising Contractor, such  
20 Performing Settling Defendant shall give such notice to EPA and must obtain an authorization to  
21 proceed from EPA, before the new Supervising Contractor performs, directs, or supervises any  
22 Work under this Consent Decree.

23 b. If EPA disapproves a proposed Supervising Contractor, EPA will notify  
24 the relevant Performing Settling Defendant in writing. The Performing Settling Defendant shall  
25 submit to EPA a list of contractors, including the qualifications of each contractor, that would be  
26 acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously  
27 proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves  
28 and an authorization to proceed with respect to any of the other contractors. The Performing

1 Settling Defendant may select any contractor from that list that is not disapproved and shall  
2 notify EPA of the name of the contractor selected within 21 days of EPA's authorization to  
3 proceed.

4 c. If EPA fails to provide written notice of its authorization to proceed or  
5 disapproval as provided in this Paragraph and this failure prevents a Performing Settling  
6 Defendant from meeting one or more deadlines in a plan approved by the EPA pursuant to this  
7 Consent Decree, the Performing Settling Defendant may seek relief under the provisions of  
8 Section XVIII (Force Majeure) hereof, but only if such failure relates to the Supervising  
9 Contractor retained by that Performing Settling Defendant.

10 11. Remedial Design/Remedial Action.

11 a. As specified in the approved schedules set forth in Section V of each  
12 SOW, Performing Settling Defendant(s) shall submit to EPA a work plan for the Remedial  
13 Design and Remedial Action at the Site ("RD/RA Work Plan"). The RD/RA Work Plan shall  
14 provide for design, construction, and implementation of the remedy set forth in the IROD and the  
15 ESD and achievement of the Performance Standards, in accordance with this Consent Decree, the  
16 IROD and the ESD, the SOW, and the design plans and specifications developed in accordance  
17 with the RD/RA Work Plan and approved by EPA. Upon its approval by EPA, the RD/RA Work  
18 Plan shall be incorporated into and become enforceable under this Consent Decree.

19 b. The RD/RA Work Plan shall include plans and schedules for  
20 implementation of all remedial design, pre-design tasks, and remedial action tasks identified in  
21 the SOW, including, but not limited to, the following: 1) treatability studies; 2) acquisition of  
22 permits, property, leases, easements, and agreements required for implementation of the RA  
23 (including the use of any existing facilities); 3) submittal of a Conceptual Design/Preliminary  
24 Design; 4) submittal of a Pre-Final Design and a Final Design; 5) submittal of a Construction  
25 Quality Assurance Plan; 6) submittal of a Sampling and Analysis Plan or addendum to an  
26 existing plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan  
27 (QAPP) in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis)); 7)  
28 submittal of an Operation and Maintenance Manual; 8) submittal of a Performance Standards



1 Evaluation Plan; and 9) submittal of a Final Remedy Evaluation Plan.

2 c. Upon approval of the RD/RA Work Plan by EPA, after a reasonable  
3 opportunity for review and comment by DTSC, and submittal of the Health and Safety Plan for  
4 all field activities to EPA, Performing Settling Defendant(s) shall implement the RD/RA Work  
5 Plan. Performing Settling Defendant(s) shall submit to EPA all plans, submittals and other  
6 deliverables required under the approved RD/RA Work Plan in accordance with the approved  
7 schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other  
8 Submissions). Unless otherwise approved by EPA, Performing Settling Defendant(s) shall not  
9 commence further Remedial Design activities at the Site prior to approval of the RD/RA Work  
10 Plan.

11 d. The Conceptual Design/Preliminary Design submittal shall include, at a  
12 minimum, the following: 1) a detailed design basis, which presents and justifies the concepts,  
13 assumptions, standards, and preliminary interpretations and calculations that will be used in the  
14 design; 2) an updated construction schedule; 3) Memoranda of Understanding (MOUs) and/or  
15 agreements between Performing Settling Defendant(s) and other entities expected to participate  
16 in the implementation of the remedy; 4) MOUs and/or agreements between Performing Settling  
17 Defendant(s) and other entities for use or disposition of treated groundwater; 5) an update on  
18 efforts to acquire permits, regulatory agency approvals, MOUs, access or use agreements,  
19 easements, third party agreements, and properties needed for construction or operation; 6) results  
20 of any treatability studies not previously submitted to EPA; 7) results of any additional field  
21 sampling and pre-design work; 8) preliminary plans, drawings, and sketches of groundwater  
22 extraction, treatment, conveyance and monitoring systems; and (9) an outline of required  
23 specifications.

24 f. The Pre-Final Design shall be a draft version of the Final Design. The  
25 Pre-Final Design submittal shall include, at a minimum, the following: (1) updates or changes to  
26 the Conceptual/Preliminary Design submittal; (2) a capital and operation and maintenance cost  
27 estimate; (3) reproducible drawings and specifications; and (4) a complete set of construction  
28 drawings in full and one-half size reduction.

1                   g.     During the design period, as specified in the approved schedules set forth  
2 in Section V of each SOW, Performing Settling Defendant(s) shall also submit the following  
3 planning documents: 1) Operation and Maintenance Manual; 2) Construction Quality Assurance  
4 Plan ("CQAP"); 3) Performance Standards Evaluation Plan (Compliance Monitoring Plan -  
5 directed at measuring progress towards meeting Performance Standards); 4) a Health and Safety  
6 Plan for field activities required by the RD/RA Work Plan which conforms to the applicable  
7 Occupational Safety and Health Administration and EPA requirements including, but not limited  
8 to, 29 C.F.R Section 1910.120; and 5) a Construction Health and Safety Plan. The CQAP shall  
9 describe the approach to quality assurance during construction activities at the Site and shall  
10 specify a quality assurance official ("QA Official"), independent of the Supervising Contractor,  
11 to conduct a quality assurance program during the construction phase of the project.

12               12.     Intentionally Blank.

13               13.     Performing Settling Defendant(s) shall continue to implement the Remedial  
14 Action and O&M until the Performance Standards are achieved and for so long thereafter as is  
15 otherwise required under this Consent Decree.

16               14.     Modification of the SOW or Related Work Plans.

17               a.     If EPA determines that modification to the work specified in the SOW  
18 and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the  
19 Performance Standards, EPA may require that such modification be incorporated in the SOW  
20 and/or such work plans, provided, however, that a modification may only be required pursuant to  
21 this Paragraph to the extent that it is consistent with the scope of the remedy selected in the  
22 IROD as supplemented by the ESD.

23               b.     If Performing Settling Defendant(s) objects to any modification  
24 determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution  
25 pursuant to Section XIX (Dispute Resolution), Paragraph 75 (record review). The SOW and/or  
26 related work plans shall be modified in accordance with final resolution of the dispute.

27               c.     Performing Settling Defendant(s) shall implement any work required by  
28 any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW

1 in accordance with this Paragraph.

2 d. Nothing in this Paragraph shall be construed to limit EPA's authority to  
3 require performance of further response actions as otherwise provided in this Consent Decree.

4 15. Performing Settling Defendant(s) acknowledge and agree that nothing in this  
5 Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a  
6 warranty or representation of any kind by Plaintiffs that compliance with the work requirements  
7 set forth in the SOW and the Work Plans will achieve the Performance Standards.

8 16. a. Performing Settling Defendant(s) shall, prior to any off-Site shipment of  
9 Waste Material from the Site to an out-of-state waste management facility, provide written  
10 notification to the appropriate state environmental official in the receiving facility's state and to  
11 the EPA Project Coordinator of such shipment of Waste Material. However, this notification  
12 requirement shall not apply to any off-Site shipments when the total volume of all such  
13 shipments will not exceed 10 cubic yards.

14 (1) Performing Settling Defendant(s) shall include in the written  
15 notification the following information, where available: (1) the name and location of the facility  
16 to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to  
17 be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method  
18 of transportation. Performing Settling Defendant(s) shall notify the state in which the planned  
19 receiving facility is located of major changes in the shipment plan, such as a decision to ship the  
20 Waste Material to another facility within the same state, or to a facility in another state.

21 (2) The identity of the receiving facility and state will be determined  
22 by Performing Settling Defendant(s) following the award of the contract for Remedial Action  
23 construction. Performing Settling Defendant(s) shall provide the information required by this  
24 Paragraph as soon as practicable after the award of the contract and before the Waste Material is  
25 actually shipped.

26 b. Before shipping any Waste Material from the Site to an off-site location,  
27 Performing Settling Defendant(s) shall obtain EPA's certification that the proposed receiving  
28 facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40

1 C.F.R. 300.440. Performing Settling Defendant(s) shall only send Waste Material from the Site  
2 to an off-site facility that complies with the requirements of the statutory provision and  
3 regulations cited in the preceding sentence.

4 VII. REMEDY REVIEW

5 17. Periodic Review. Performing Settling Defendant(s) shall conduct any studies and  
6 investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the  
7 Remedial Action is protective of human health and the environment at least every five years as  
8 required by Section 121(c) of CERCLA and any applicable regulations.

9 18. EPA Selection of Further Response Actions. If EPA determines, at any time, that  
10 the Remedial Action is not protective of human health and the environment, EPA may select  
11 further response actions for the Site in accordance with the requirements of CERCLA and the  
12 NCP.

13 19. Opportunity To Comment. Performing Settling Defendant(s) and, if required by  
14 Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to  
15 comment on any further response actions proposed by EPA as a result of the review conducted  
16 pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the  
17 comment period.

18 20. Performing Settling Defendant(s)' Obligation To Perform Further Response  
19 Actions. If EPA selects further response actions for the Site, the Performing Settling  
20 Defendant(s) shall undertake such further response actions to the extent that the reopener  
21 conditions in Paragraph 94 (General reservations of rights) are satisfied. Notwithstanding any  
22 other provision of this Consent Decree, including but not limited to Paragraphs 14, 51 and 94, no  
23 Settling Defendant(s) shall be required by this Consent Decree to perform any Work related in  
24 any way to the Emerging Compounds ("ECs") identified in the ESD, including determining the  
25 source(s) of such ECs, the extent of any groundwater or soil contamination by such ECs, or the  
26 removal or remediation of such ECs from the soil or groundwater, other than as necessary to treat  
27 such ECs at the wellhead upon extraction so as to ensure compliance with the ARARs.  
28 Performing Settling Defendant(s) may invoke the procedures set forth in Section XIX (Dispute

1 Resolution) to dispute (1) EPA's determination that the reservations of rights conditions of  
2 Paragraph 94 of Section XXI (Covenants Not To Sue by Plaintiffs) are satisfied, (2) EPA's  
3 determination that the Remedial Action is not protective of human health and the environment,  
4 or (3) EPA's selection of the further response actions. Disputes pertaining to the whether the  
5 Remedial Action is protective or to EPA's selection of further response actions shall be resolved  
6 pursuant to Paragraph 75 (record review).

7 21. Submissions of Plans. If Performing Settling Defendant(s) are required to  
8 perform the further response actions pursuant to Paragraph 20, they shall submit a plan for such  
9 work to EPA for approval in accordance with the procedures set forth in Section VI  
10 (Performance of the Work by Performing Settling Defendant(s)) and shall implement the plan  
11 approved by EPA in accordance with the provisions of this Decree.

12 VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

13 22. Performing Settling Defendant(s) shall use quality assurance, quality control, and  
14 chain of custody procedures for all treatability, design, compliance and monitoring samples in  
15 accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)"  
16 (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)"  
17 (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon  
18 notification by EPA to Performing Settling Defendant(s) of such amendment. Amended  
19 guidelines shall apply only to procedures conducted after such notification. Prior to the  
20 commencement of any monitoring project under this Consent Decree, Performing Settling  
21 Defendant(s) shall submit to EPA for approval, after a reasonable opportunity for review and  
22 comment by DTSC, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW,  
23 the NCP and applicable guidance documents. If relevant to the proceeding, the Performing  
24 Settling Defendants and Plaintiffs agree that validated sampling data generated in accordance  
25 with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without  
26 objection, in any proceeding under this Decree. Performing Settling Defendant(s) shall use  
27 reasonable efforts to ensure that EPA personnel and its authorized representatives are allowed  
28 access at reasonable times to the respective laboratories utilized by Performing Settling

1 Defendant(s) in implementing this Consent Decree. In addition, Performing Settling  
2 Defendant(s) shall ensure that such laboratories shall analyze all samples submitted by EPA  
3 pursuant to the QAPP for quality assurance monitoring. Performing Settling Defendant(s) shall  
4 ensure that the respective laboratories they utilize for the analysis of samples taken pursuant to  
5 this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods  
6 consist of those methods which are documented in the ["Contract Lab Program Statement of  
7 Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic  
8 Analysis," dated February 1988], and any amendments made thereto during the course of the  
9 implementation of this Decree; however, upon approval by EPA, after opportunity for review  
10 and comment by DTSC, Performing Settling Defendant(s) may use other analytical methods  
11 which are as stringent as or more stringent than the CLP-approved methods. Performing Settling  
12 Defendant(s) shall ensure that all laboratories they use for analysis of samples taken pursuant to  
13 this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Performing  
14 Settling Defendant(s) shall only use laboratories that have a documented Quality System which  
15 complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for  
16 Environmental Data Collection and Environmental Technology Programs," ("American National  
17 Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2),"  
18 (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA  
19 may consider laboratories accredited under the National Environmental Laboratory Accreditation  
20 Program (NELAP) as meeting the Quality System requirements. Performing Settling  
21 Defendant(s) shall ensure that all field methodologies utilized in collecting samples for  
22 subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures  
23 set forth in the QAPP approved by EPA.

24       23. Upon request by EPA, Performing Settling Defendant(s) shall allow split or  
25 duplicate samples to be taken by EPA or its authorized representatives. Performing Settling  
26 Defendant(s) shall notify EPA not less than 28 days in advance of any sample collection activity  
27 unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any  
28 additional samples that EPA deems necessary. Upon request, EPA shall allow Performing

1 Settling Defendant(s) to take split or duplicate samples of any samples it takes as part of the  
2 Plaintiffs' oversight of Performing Settling Defendant(s)' implementation of the Work.

3 24. Performing Settling Defendant(s) shall submit to EPA 2 copies of the results of all  
4 sampling and/or tests or other data obtained or generated by or on behalf of Performing Settling  
5 Defendant(s) with respect to the Site and/or the implementation of this Consent Decree unless  
6 EPA agrees otherwise.

7 25. Notwithstanding any provision of this Consent Decree, the United States and  
8 DTSC hereby retain all of their information gathering and inspection authorities and rights,  
9 including enforcement actions related thereto, under CERCLA, RCRA and any other applicable  
10 statutes or regulations.

11 IX. ACCESS

12 26. If the Site, or any other property where access and/or land/water use restrictions  
13 are needed to implement this Consent Decree, is owned or controlled by any of the Settling  
14 Defendants, such Settling Defendant shall:

15 a. commencing on the date of lodging of this Consent Decree, provide the  
16 United States and its representatives, including EPA and its contractors, and DTSC with access  
17 at all reasonable times to the Site, or such other property, for the purpose of conducting any  
18 activity related to this Consent Decree including, but not limited to, the following activities:

- 19 (1) Monitoring the Work;
- 20 (2) Verifying any data or information submitted to the United States or  
21 DTSC ;
- 22 (3) Conducting investigations relating to contamination at or near the  
23 Site;
- 24 (4) Obtaining samples;
- 25 (5) Assessing the need for, planning, or implementing additional  
26 response actions at or near the Site;
- 27 (6) Assessing implementation of quality assurance and quality control  
28 practices as defined in the approved Quality Assurance Project Plans;

1 (7) Implementing the Work pursuant to the conditions set forth in  
2 Paragraph 95 of this Consent Decree;

3 (8) Inspecting and copying records, operating logs, contracts, or other  
4 documents maintained or generated by Settling Defendants or their agents, consistent  
5 with Section XXIV ("Access to Information"); and

6 (9) Assessing Performing Settling Defendants' compliance with this  
7 Consent Decree.

8 27. If the Site, or any other property where access and/or land/water use restrictions  
9 are needed to implement this Consent Decree, is owned or controlled by persons other than any  
10 of the Performing Settling Defendants, the Performing Settling Defendant for which access is  
11 necessary shall use best efforts to secure from such persons:

12 a. an agreement to provide access thereto for such Performing Settling  
13 Defendant, as well as for the United States on behalf of EPA, as well as their representatives  
14 (including contractors), and DTSC, for the purpose of conducting any activity related to this  
15 Consent Decree including, but not limited to, those activities listed in Paragraph 26.a of this  
16 Consent Decree.

17 28. For purposes of Paragraphs 27 of this Consent Decree, "best efforts" includes the  
18 payment of reasonable sums of money in consideration of access, access easements, land/water  
19 use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien  
20 or encumbrance. If any access or land/water use restriction agreements required by Paragraph 27  
21 of this Consent Decree are not obtained within a reasonable period of time after the need for such  
22 access becomes known to the relevant Performing Settling Defendant, such Performing Settling  
23 Defendant shall promptly notify the United States in writing, and shall include in that  
24 notification a summary of the steps that the Performing Settling Defendant has taken to attempt  
25 to comply with Paragraph 27 of this Consent Decree. The United States may, as it deems  
26 appropriate, assist Performing Settling Defendant(s) in obtaining access or land/water use  
27 restrictions, either in the form of an order, or contractual agreements or in the form of easements  
28 running with the land, or in obtaining the release or subordination of a prior lien or encumbrance.



1 The relevant Performing Settling Defendant(s) shall reimburse the United States and DTSC in  
2 accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs  
3 incurred, direct or indirect, by the United States or DTSC in obtaining such access, land/water  
4 use restrictions, and/or the release/subordination of prior liens or encumbrances including, but  
5 not limited to, the cost of attorney time and the amount of monetary consideration paid or just  
6 compensation.

7 29. If EPA determines that land/water use restrictions in the form of state or local  
8 laws, regulations, ordinances or other governmental controls are needed to implement the remedy  
9 selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference  
10 therewith, Performing Settling Defendants shall cooperate with EPA's and DTSC's efforts to  
11 secure such governmental controls. Each Settling Defendant shall cooperate with EPA's efforts  
12 to secure such governmental controls with respect to property owned by the Settling Defendant.

13 30. Notwithstanding any provision of this Consent Decree, the United States and  
14 DTSC retain all of their access authorities and rights, as well as all of its rights to require  
15 land/water use restrictions, including enforcement authorities related thereto, under CERCLA,  
16 RCRA and any other applicable statute or regulations.

17 **X. REPORTING REQUIREMENTS**

18 31. In addition to any other requirement of this Consent Decree, Performing Settling  
19 Defendant(s) shall submit to EPA 2 copies of written monthly progress reports that: (a) describe  
20 the actions which have been taken toward achieving compliance with this Consent Decree during  
21 the previous month; (b) include a summary of all results of sampling and tests and all other data  
22 received or generated by Performing Settling Defendant(s) or their contractors or agents in the  
23 previous month; (c) identify all work plans, plans and other deliverables required by this Consent  
24 Decree completed and submitted during the previous month; (d) describe all actions, including,  
25 but not limited to, data collection and implementation of work plans, which are scheduled for the  
26 next six weeks and provide other information relating to the progress of construction, including,  
27 but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information  
28 regarding percentage of completion, unresolved delays encountered or anticipated that may affect

1 the future schedule for implementation of the Work, and a description of efforts made to mitigate  
2 those delays or anticipated delays; (f) include any modifications to the work plans or other  
3 schedules that Performing Settling Defendant(s) have proposed to EPA or that have been  
4 approved by EPA; and (g) describe all activities undertaken in support of the community  
5 Relations Plan during the previous month and those to be undertaken in the next six weeks.  
6 Performing Settling Defendant(s) shall submit these progress reports to EPA by the tenth day of  
7 every month beginning 30 days after lodging of this Consent Decree, until EPA notifies  
8 Performing Settling Defendant(s) pursuant to Section XIV (Certification of Completion). If  
9 requested by EPA, Performing Settling Defendant(s) shall also provide telephonic briefings for  
10 EPA to discuss the progress of the Work.

11 32. Performing Settling Defendant(s) shall notify EPA of any change in the schedule  
12 described in the monthly progress report for the performance of any activity, including, but not  
13 limited to, data collection and implementation of work plans, no later than seven days prior to the  
14 performance of the activity.

15 33. Upon the occurrence of any event during performance of the Work that  
16 Performing Settling Defendant(s) are required to report pursuant to Section 103 of CERCLA or  
17 Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA),  
18 Performing Settling Defendant(s) shall within 24 hours of the onset of such event orally notify  
19 the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the  
20 unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project  
21 Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response  
22 Section, Region 9, United States Environmental Protection Agency. These reporting  
23 requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA  
24 Section 304.

25 34. Within 20 days of the onset of such an event, Performing Settling Defendant(s)  
26 shall furnish to Plaintiffs a written report, signed by Performing Settling Defendant(s)' Project  
27 Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in  
28 response thereto. Within 30 days of the conclusion of such an event, Performing Settling

1 Defendant(s) shall submit to Plaintiffs a report setting forth all actions taken in response thereto.

2 35. Performing Settling Defendant(s) shall submit 2 copies of all plans, reports, and  
3 data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or  
4 any other approved plans to EPA in accordance with the schedules set forth in such plans.

5 Performing Settling Defendant(s) shall simultaneously submit 2 copies of all such plans, reports  
6 and data to DTSC. Upon request by EPA, Performing Settling Defendant(s) shall submit in  
7 electronic form all portions of any report or other deliverable Performing Settling Defendant(s)  
8 are required to submit pursuant to the provisions of this Consent Decree.

9 36. All reports and other documents submitted by Performing Settling Defendant(s) to  
10 EPA (other than the monthly progress reports referred to above) which purport to document  
11 Performing Settling Defendant(s)' compliance with the terms of this Consent Decree shall be  
12 signed by an authorized representative of Performing Settling Defendant(s).

13 XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

14 37. After review of any plan, report or other item which is required to be submitted  
15 for approval pursuant to this Consent Decree, EPA shall: (a) approve, in whole or in part, the  
16 submission; (b) approve the submission upon specified conditions; (c) modify the submission to  
17 cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that  
18 Performing Settling Defendant(s) modify the submission; or (e) any combination of the above.  
19 However, EPA shall not modify a submission without first providing Performing Settling  
20 Defendant(s) at least one notice of deficiency and an opportunity to cure within 7 Days, except  
21 where to do so would cause serious disruption to the Work or where previous submission(s) have  
22 been disapproved due to material defects and the deficiencies in the submission under  
23 consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

24 38. In the event of approval, approval upon conditions, or modification by EPA,  
25 pursuant to Paragraph 37(a), (b), or (c), Performing Settling Defendant(s) shall proceed to take  
26 any action required by the plan, report, or other item, as approved or modified by EPA subject  
27 only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute  
28 Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA

1 modifies the submission to cure the deficiencies pursuant to Paragraph 37 and the submission has  
2 a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX  
3 (Stipulated Penalties).

4 39. Resubmission of Plans.

5 a. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Performing  
6 Settling Defendant(s) shall, within 21 Days or such longer time as specified by EPA in such  
7 notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any  
8 stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during  
9 the 21 Day period or otherwise specified period but shall not be payable unless the resubmission  
10 is disapproved or modified due to a material defect as provided in Paragraphs 40 and 41.

11 b. Notwithstanding the receipt of a notice of disapproval pursuant to  
12 Paragraph 37(d), Performing Settling Defendant(s) shall proceed, at the direction of EPA, to take  
13 any action required by any non-deficient portion of the submission. Implementation of any non-  
14 deficient portion of a submission shall not relieve Performing Settling Defendant(s) of any  
15 liability for stipulated penalties under Section XX (Stipulated Penalties).

16 40. In the event that a resubmitted plan, report or other item, or portion thereof, is  
17 disapproved by EPA, EPA may again require Performing Settling Defendant(s) to correct the  
18 deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify  
19 or develop the plan, report or other item. Performing Settling Defendant(s) shall implement any  
20 such plan, report, or item as modified or developed by EPA, subject only to their right to invoke  
21 the procedures set forth in Section XIX (Dispute Resolution).

22 41. If upon resubmission, a plan, report, or item is disapproved or modified by EPA  
23 due to a material defect, Performing Settling Defendant(s) shall be deemed to have failed to  
24 submit such plan, report, or item timely and adequately unless Performing Settling Defendant(s)  
25 invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and  
26 EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute  
27 Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work  
28 and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's

1 disapproval or modification is upheld, stipulated penalties shall accrue for such violation from  
2 the date on which the initial submission was originally required, as provided in Section XX.

3 42. All plans, reports, and other items required to be submitted to EPA under this  
4 Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent  
5 Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required  
6 to be submitted to EPA under this Consent Decree, the approved or modified portion shall be  
7 enforceable under this Consent Decree.

8 XII. PROJECT COORDINATORS

9 43. Within 20 days of lodging this Consent Decree, Performing Settling Defendant(s)  
10 and EPA will notify each other, in writing, of the name, address and telephone number of their  
11 respective designated Project Coordinators and Alternate Project Coordinators. If a Project  
12 Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the  
13 successor will be given to the other Parties at least 5 Working Days before the changes occur,  
14 unless impracticable, but in no event later than the actual day the change is made. Performing  
15 Settling Defendant(s)' Project Coordinators shall be subject to disapproval by EPA and shall have  
16 the technical expertise sufficient to adequately oversee all aspects of the Work. The Project  
17 Coordinators may assign other representatives, including other contractors, to serve as Site  
18 representatives for oversight of performance of daily operations during remedial activities.

19 44. Plaintiffs may designate other representatives, including, but not limited to, EPA  
20 employees, and federal contractors and consultants, to observe and monitor the progress of the  
21 Work undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate  
22 Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager  
23 (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part  
24 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have  
25 authority, consistent with the National Contingency Plan, to halt any Work required by this  
26 Consent Decree and to take any necessary response action when s/he determines that conditions  
27 at the Site constitute an emergency situation or may present an immediate threat to public health  
28 or welfare or the environment due to release or threatened release of Waste Material.

1           45.     EPA's Project Coordinator and Performing Settling Defendant(s)' Project  
2 Coordinators will meet in person or confer telephonically, at a minimum, on a monthly basis.  
3 The East Side Performing Settling Defendants and the West Side Performing Settling Defendant  
4 will meet or confer with EPA's Project Coordinator together or separately, as appropriate under  
5 the circumstances at the time.

6                               XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

7           46.     Within 60 days of entry of this Consent Decree, the East Side Performing  
8 Settling Defendant(s) shall establish and maintain financial security in the amount of  
9 \$21,400,000. Within 30 days of entry of this Consent Decree, the West Side Performing Settling  
10 Defendant shall establish and maintain financial security in the amount of \$16,700,000.

11 Financial security shall be established and maintained in one or more of the following forms:

- 12                   a.     A surety bond guaranteeing performance of the East Side or West Side  
13 Work, as applicable;  
14                   b.     One or more irrevocable letters of credit;  
15                   c.     A trust fund;  
16                   d.     A guarantee to perform the East Side or West Side Work, as applicable, by  
17 one or more parent corporations or subsidiaries, or by one or more unrelated corporations that  
18 have a substantial business relationship with at least one of Performing Settling Defendant(s);  
19                   e.     A demonstration that one or more of Performing Settling Defendants  
20 satisfy the requirements of 40 C.F.R. Part 264.143(f) for the East Side or West Side Work, as  
21 applicable .  
22                   f.     Any combination of the above.

23           47.     If a Performing Settling Defendant seeks to demonstrate the ability to complete its  
24 respective portion of the Work through a guarantee by a third party pursuant to Paragraph 46(d)  
25 of this Consent Decree, such Performing Settling Defendant shall demonstrate that the guarantor  
26 satisfies the requirements of 40 C.F.R. Part 264.143(f). If a Performing Settling Defendant seeks  
27 to demonstrate its ability to complete the Work by means of the financial test or the corporate  
28 guarantee pursuant to Paragraph 46(d) or 43(e), such Performing Settling Defendant shall

1 resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f)  
2 annually, on the anniversary of the Effective Date. In the event that EPA determines at any time  
3 that the financial assurances provided by a Performing Settling Defendant pursuant to this  
4 Section are inadequate, the Performing Settling Defendant shall, within 90 days of receipt of  
5 notice of EPA's determination, obtain and present to EPA for approval one of the other forms of  
6 financial assurance listed in Paragraph 46 of this Consent Decree. Performing Settling  
7 Defendant(s)' inability to demonstrate financial ability to complete their respective portion of the  
8 Work shall not excuse performance of any activities required under this Consent Decree.

9       48. If a Performing Settling Defendant can show that the estimated cost to complete  
10 the remaining Work has diminished below the amount set forth in Paragraph 46 above after entry  
11 of this Consent Decree, such Performing Settling Defendant may, on any anniversary date of  
12 entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of  
13 the respective financial security provided under this Section to the estimated cost of the  
14 remaining work to be performed. The Performing Settling Defendant shall submit a proposal for  
15 such reduction to EPA, in accordance with the requirements of this Section, and may reduce the  
16 amount of the security upon approval by EPA. In the event of a dispute, Performing Settling  
17 Defendant(s) may reduce the amount of their respective security in accordance with the final  
18 administrative or judicial decision resolving the dispute.

19       49. Performing Settling Defendant(s) may change the form of their respective  
20 financial assurance provided under this Section at any time, upon notice to and approval by EPA,  
21 provided that the new form of assurance meets the requirements of this Section. In the event of a  
22 dispute, the Performing Settling Defendant involved in the dispute may change the form of its  
23 financial assurance only in accordance with the final administrative or judicial decision resolving  
24 the dispute.

#### 25                                   XIV. CERTIFICATION OF COMPLETION

26       50. Intentionally Blank.

27       51. Completion of the Work.

28           a. Within 45 days after a Performing Settling Defendant concludes that all

1 phases of its portion of the Work (including O & M), have been fully performed, such  
2 Performing Settling Defendant shall schedule and conduct a pre-certification inspection to be  
3 attended by such Performing Settling Defendant and EPA. If, after the pre-certification  
4 inspection, Performing Settling Defendant still believes that the Work has been fully performed,  
5 Performing Settling Defendant(s) shall submit a written report by a registered professional  
6 engineer stating that the Work has been completed in full satisfaction of the requirements of this  
7 Consent Decree, within 30 days of the pre-certification inspection. The report shall contain the  
8 following statement, signed by a responsible corporate official of the Performing Settling  
9 Defendant or Performing Settling Defendant's Project Coordinator:

10       To the best of my knowledge, after thorough investigation, I certify that the  
11       information contained in or accompanying this submission is true, accurate and  
12       complete. I am aware that there are significant penalties for submitting false  
13       information, including the possibility of fine and imprisonment for knowing  
14       violations.

15 If, after review of the written report, EPA determines that any part of the Performing Settling  
16 Defendant's portion of the Work has not been completed in accordance with this Consent  
17 Decree, EPA will notify the Performing Settling Defendant in writing of the activities that must  
18 be undertaken by the Performing Settling Defendant pursuant to this Consent Decree to complete  
19 its portion of the Work, provided, however, that EPA may only require Performing Settling  
20 Defendant(s) to perform such activities pursuant to this Paragraph to the extent that such  
21 activities are consistent with the "scope of the remedy selected in the IROD as supplemented by  
22 the ESD" as that term is defined in Paragraph 14(b). EPA will set forth in the notice a schedule  
23 for performance of such activities consistent with the Consent Decree and the SOW or require  
24 the Performing Settling Defendant to submit a schedule to EPA for approval pursuant to Section  
25 XI (EPA Approval of Plans and Other Submissions). The Performing Settling Defendant shall  
26 perform all activities described in the notice in accordance with the specifications and schedules  
27 established therein, subject to its right to invoke the dispute resolution procedures set forth in  
28 Section XIX (Dispute Resolution).

b.       If EPA concludes, based on the initial or any subsequent request for  
Certification of Completion by a Performing Settling Defendant, that its respective portion of the



1 Work has been performed in accordance with this Consent Decree, EPA will so notify the  
2 Performing Settling Defendant in writing.

3 XV. EMERGENCY RESPONSE

4 52. In the event of any action or occurrence during the performance of the East  
5 Side or West Side Work which causes or threatens a release of Waste Material from the Site that  
6 constitutes an emergency situation or may present an immediate threat to public health or welfare  
7 or the environment, the relevant Performing Settling Defendant shall, subject to the following  
8 Paragraph, immediately take all appropriate action to prevent, abate, or minimize such release or  
9 threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project  
10 Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is  
11 available, the Performing Settling Defendant shall notify the EPA [Emergency Response Unit],  
12 Region 9. The Performing Settling Defendant shall take such actions in consultation with EPA's  
13 Project Coordinator or other available authorized EPA officer and in accordance with all  
14 applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other  
15 applicable plans or documents developed pursuant to the SOW. In the event that Performing  
16 Settling Defendant fails to take appropriate response action as required by this Section, and EPA  
17 takes such action instead, the Performing Settling Defendant shall reimburse EPA for all costs of  
18 the response action not inconsistent with the NCP pursuant to Section XVI (Payments for  
19 Response Costs).

20 53. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to  
21 limit any authority of the United States a) to take all appropriate action to protect human health  
22 and the environment or to prevent, abate, respond to, or minimize an actual or threatened release  
23 of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order  
24 from the Court, to protect human health and the environment or to prevent, abate, respond to, or  
25 minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to  
26 Section XXI (Covenants Not to Sue by Plaintiffs).

27 XVI. PAYMENTS FOR RESPONSE COSTS

28 54. Payments for Plaintiffs' Past Response Costs.

1           a.     The East Side Performing Settling Defendant(s) shall pay to EPA  
2 \$1,250,000.00 (One Million Two Hundred and Fifty Thousand Dollars) in payment for Past  
3 Response Costs as follows:

- 4                   i) \$350,000.00 within 30 days of the Effective Date  
5                   ii) \$450,000.00 one year from the Effective Date  
6                   iii) \$450,000.00 two years from the Effective Date.

7 The last two payments shall bear Interest on the declining principal balance calculated from 30  
8 days after the Effective Date.

9           b.     The West Side Performing Settling Defendant shall pay to EPA  
10 \$250,000.00 (Two Hundred and Fifty Thousand Dollars) in payment for Past Response Costs as  
11 follows:

- 12                   i) \$50,000.00 within 30 days of the Effective Date  
13                   ii) \$100,000.00 one year from the Effective Date  
14                   iii) \$100,000.00 two years from the Effective Date.

15 The last two payments shall bear Interest on the declining principal balance calculated from 30  
16 days after the Effective Date.

17           c.     Safety-Kleen Systems, Inc. shall pay to EPA \$400,000.00 (Four Hundred  
18 Thousand Dollars) as follows:

- 19                   i) \$100,000.00 within 30 days of the Effective Date  
20                   ii) \$150,000.00 one year from the Effective Date  
21                   iii) \$150,000.00 two years from the Effective Date.

22 The last two payments shall bear Interest on the declining principal balance calculated from 30  
23 days after the Effective Date.

24           d.     Within 30 days of the Effective Date, Paul Lee shall pay to EPA  
25 \$32,500.00 (Thirty-Two Thousand Five Hundred Dollars) in payment for Past Response Costs.

26           e.     All payments set forth in this Paragraph shall be made by FedWire  
27 Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with  
28 current EFT procedures, referencing EPA Site/Spill ID Number 097B, and DOJ Case Number

1 90-11-2-354/3. Payment shall be made in accordance with instructions provided to the Settling  
2 Defendants specified above by the Financial Litigation Unit of the United States Attorney's  
3 Office for the Central District of California following lodging of the Consent Decree. Any  
4 payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited  
5 on the next business day.

6 f. At the time of payment, the Settling Defendants specified above shall send  
7 notice that payment has been made to the United States, to EPA and to the Regional Financial  
8 Management Officer, in accordance with Section XXVI (Notices and Submissions).

9 g. The total amount to be paid by the Settling Defendants specified pursuant  
10 to this Paragraph shall be deposited in the El Monte Operable Unit Special Account within the  
11 EPA Hazardous Substance Superfund to be retained and used to conduct or finance response  
12 actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous  
13 Substance Superfund.

14 h. Payment of DTSC Past Response Costs to DTSC. Within 30 days of entry  
15 of this Consent Decree, Performing Settling Defendants shall pay to DTSC \$50,000 in the form  
16 of a certified check or cashier's check, in reimbursement of DTSC Past Response Costs.  
17 Performing Settling Defendants' check shall be made payable to Cashier, Department of Toxic  
18 Substances Control, and shall be forwarded to:

19 Department of Toxic Substances Control  
20 State of California  
21 Accounting Office  
1001 I Street  
Sacramento, California 95814

22 Performing Settling Defendants shall send a transmittal letter with the check referencing the San  
23 Gabriel Valley Superfund Sites, El Monte Operable Unit. Performing Settling Defendants shall  
24 also send a copy of the check and transmittal letter to DTSC, as specified in Section XXVI  
25 (Notices and Submissions).

26 55. Payments for Plaintiffs' Future Response Costs by Performing Settling  
27 Defendants.

28 a. Performing Settling Defendant(s) shall pay to EPA all Future Response

1 Costs that EPA incurs with respect to the Work, in accordance with Paragraph 6.a. and b. and the  
2 following sub-paragraphs.

3 b. Performing Settling Defendant(s) shall pay to EPA all Future Response  
4 Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States  
5 will send Performing Settling Defendants a bill requiring payment that includes a standard  
6 Regionally-prepared cost summary, which includes direct and indirect costs incurred by EPA and  
7 its contractors, and a DOJ-prepared cost summary which reflects costs incurred by DOJ and its  
8 contractors, if any. Performing Settling Defendant(s) shall make all payments within 45 days of  
9 Performing Settling Defendant(s)' receipt of each bill requiring payment, except as otherwise  
10 provided in the following Paragraph. Performing Settling Defendant(s) shall make all payments  
11 required by this Paragraph by a certified or cashier's check or checks made payable to "EPA  
12 Hazardous Substance Superfund," referencing the name and address of the party making the  
13 payment; EPA Site/Spill ID Number 097B, and DOJ Case Number 90-11-2-354/3. Performing  
14 Settling Defendant(s) shall send the check(s) to:

15 EPA Hazardous Substances Superfund  
16 US EPA  
16 Region 9  
17 Attn: Superfund Accounting  
17 P.O. Box 360863M  
18 Pittsburgh, PA 15251.

18 c. At the time of payment, Performing Settling Defendant(s) shall send  
19 notice that payment has been made to the United States, to EPA and to the Regional Financial  
20 Management Officer, in accordance with Section XXVI (Notices and Submissions).

21 d. Performing Settling Defendants' payments pursuant to this Paragraph shall  
22 be deposited in the El Monte Operable Unit Special Account within the EPA Hazardous  
23 Substance Superfund to be retained and used to conduct or finance response actions at or in  
24 connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance  
25 Superfund.

26 e. Payment of DTSC Future Response Costs to DTSC. Performing Settling  
27 Defendant(s) shall pay to DTSC all DTSC Future Response Costs not inconsistent with the  
28 National Contingency Plan. On a periodic basis DTSC will send Performing Settling Defendants

1 a bill requiring payment that includes a standard DTSC cost summary, which includes direct and  
2 indirect costs incurred by DTSC and its contractors. Performing Settling Defendant(s) shall  
3 make all payments within 45 days of Performing Settling Defendant(s)' receipt of each bill  
4 requiring payment, except as otherwise provided in the following Paragraph. Performing  
5 Settling Defendant(s) shall make all payments required by this Paragraph in the form of a  
6 certified check or cashier's check made payable to Cashier, Department of Toxic Substances  
7 Control, and shall be forwarded to:

8 Department of Toxic Substances Control  
9 State of California  
10 Accounting Office  
1001 I Street  
Sacramento, California 95814

11 Performing Settling Defendants shall send a transmittal letter with the check referencing the San  
12 Gabriel Valley Superfund Sites, El Monte Operable Unit. Performing Settling Defendants shall  
13 also send a copy of its check and transmittal letter to DTSC, as specified in Section XXVI  
14 (Notices and Submissions).

15 56. Performing Settling Defendant(s) may contest payment of any Future Response  
16 Costs under the preceding Paragraph ("Payments for Plaintiffs' Future Response Costs") if they  
17 determine that the United States or DTSC has made an accounting error or if they allege that a  
18 cost item that is included represents costs that are inconsistent with the NCP. Such objection  
19 shall be made in writing within 45 days of receipt of the bill and must be sent to the United  
20 States or DTSC, as applicable, pursuant to Section XXVI (Notices and Submissions). Any such  
21 objection shall specifically identify the contested Future Response Costs and the basis for  
22 objection. In the event of an objection, Performing Settling Defendant(s) shall, within the 45-day  
23 period, pay all uncontested Future Response Costs to the United States or DTSC in the manner  
24 described in the preceding Paragraph ("Payments for Plaintiffs' Future Response Costs").  
25 Simultaneously, Performing Settling Defendant(s) shall establish an interest-bearing escrow  
26 account in a federally insured bank duly chartered in the State of California and remit to that  
27 escrow account funds equivalent to the amount of the contested Future Response Costs.  
28 Performing Settling Defendant(s) shall send to the United States or DTSC, as applicable, as

1 provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check  
2 paying the uncontested Future Response Costs, and a copy of the correspondence that establishes  
3 and funds the escrow account, including, but not limited to, information containing the identity  
4 of the bank and bank account under which the escrow account is established as well as a bank  
5 statement showing the initial balance of the escrow account. Simultaneously with establishment  
6 of the escrow account, Performing Settling Defendant(s) shall initiate the Dispute Resolution  
7 procedures in Section XIX (Dispute Resolution). If the United States or DTSC prevails in the  
8 dispute, within 5 days of the resolution of the dispute, Performing Settling Defendant(s) shall pay  
9 the sums due (with accrued interest) to the United States or DTSC in the manner described in the  
10 preceding Paragraph ("Payments for Plaintiffs' Future Response Costs"). If Performing Settling  
11 Defendant(s) prevail concerning any aspect of the contested costs, Performing Settling  
12 Defendant(s) shall pay that portion of the costs (plus associated accrued interest) for which they  
13 did not prevail to the United States or DTSC in the manner described in the preceding Paragraph  
14 ("Payments for Plaintiffs' Future Response Costs"); any balance of the escrow account shall be  
15 disbursed to Performing Settling Defendant(s). The dispute resolution procedures set forth in  
16 this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution)  
17 shall be the exclusive mechanisms for resolving disputes regarding Performing Settling  
18 Defendant(s)' obligation to reimburse the United States or DTSC for their respective Future  
19 Response Costs.

20       57. In the event that the payments required by Paragraph 54 ("Payments for Plaintiffs'  
21 Past Response Costs") are not made on the date due, or the payments required by Paragraph 55  
22 ("Payments for Plaintiffs' Future Response Costs") are not made on the date due, Performing  
23 Settling Defendants, Safety Kleen or Paul Lee, as applicable, shall pay Interest on the unpaid  
24 balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to  
25 accrue on the date due. The Interest on Future Response Costs shall begin to accrue on the due  
26 date of the bill. The Interest shall accrue through the date of the respective Settling Defendant's  
27 payment. Payments of Interest made under this Paragraph shall be in addition to such other  
28 remedies or sanctions available to Plaintiffs by virtue of a specified Settling Defendant's failure

1 to make timely payments under this Section including, but not limited to, payment of stipulated  
2 penalties pursuant to Paragraph 79. The specified Settling Defendants shall make all payments  
3 required by this Paragraph in the manner described in Paragraph 54.

4 58. Payments between Settling Defendants.

5 a. The East Side Performing Settling Defendants shall pay \$3.3 million into a  
6 fund established by the West Side Performing Settling Defendant within 70 days of the Effective  
7 Date (unless an appeal of the entry of the Consent Decree is taken, in which case the payment  
8 will not become due until 10 days after final resolution of the appeal in favor of entry). EPA  
9 shall be a co-signatory on all disbursements from such fund by West Side Performing Settling  
10 Defendant.

11 b. Within 70 days of the Effective Date, the Union Pacific Railroad  
12 Company shall pay Two Hundred Fifty Thousand Dollars (\$250,000.00) to the West Side  
13 Performing Settling Defendant and shall provide evidence of such payment to EPA concurrently  
14 therewith; provided, however, that if an appeal of the entry of the Consent Decree is taken, the  
15 payment will not become due until 10 days after final resolution of the appeal in favor of entry.

16 59. All other payments to Performing Settling Defendants by Contributing Settling  
17 Defendants will be made in accordance with Appendix H.

18 60. Intentionally Blank

19 61. Intentionally Blank

20 62. Intentionally Blank

21 63. Intentionally Blank

22 64. Intentionally Blank

23 XVII. INDEMNIFICATION AND INSURANCE

24 65. Performing Settling Defendant(s)' Indemnification of the United States and  
25 DTSC.

26 a. The United States and DTSC do not assume any liability by entering into  
27 this agreement or by virtue of any designation of Performing Settling Defendants as EPA's  
28 authorized representatives under Section 104(e) of CERCLA. Performing Settling Defendant(s)

1 shall indemnify, save and hold harmless the United States and DTSC and their officials, agents,  
2 employees, contractors, subcontractors, or representatives for or from any and all claims or  
3 causes of action arising from, or on account of, negligent or other wrongful acts or omissions of  
4 Performing Settling Defendant(s), their officers, directors, employees, agents, contractors,  
5 subcontractors, and any persons acting on their behalf or under their control, in carrying out  
6 activities pursuant to this Consent Decree, including, but not limited to, any claims arising from  
7 any designation of Performing Settling Defendant(s) as EPA's authorized representatives under  
8 Section 104(e) of CERCLA. Further, Performing Settling Defendant(s) agree to pay the United  
9 States and DTSC all costs they incur including, but not limited to, attorneys fees and other  
10 expenses of litigation and settlement arising from, or on account of, claims made against the  
11 United States or DTSC based on negligent or other wrongful acts or omissions of Performing  
12 Settling Defendant(s), their officers, directors, employees, agents, contractors, subcontractors,  
13 and any persons acting on their behalf or under their control, in carrying out activities pursuant to  
14 this Consent Decree. The United States or DTSC shall not be held out as a party to any contract  
15 entered into by or on behalf of Performing Settling Defendant(s) in carrying out activities  
16 pursuant to this Consent Decree. Neither Performing Settling Defendant(s) nor any such  
17 contractor shall be considered an agent of the United States or DTSC.

18           b.       The United States and DTSC shall give Performing Settling Defendant(s)  
19 notice of any claim for which the United State or DTSC s plans to seek indemnification pursuant  
20 to this Paragraph, and shall consult with Performing Settling Defendant(s) prior to settling such  
21 claim.

22           66.       Performing Settling Defendant(s) waive all claims against the United States and  
23 DTSC for damages or reimbursement or for set-off of any payments made or to be made to the  
24 United States or DTSC, arising from or on account of any contract, agreement, or arrangement  
25 between any one or more of Performing Settling Defendant(s) and any person for performance of  
26 Work on or relating to the Site, including, but not limited to, claims on account of construction  
27 delays. In addition, Performing Settling Defendant(s) shall indemnify and hold harmless the  
28 United States and DTSC with respect to any and all claims for damages or reimbursement arising



1 from or on account of any contract, agreement, or arrangement between any one or more of  
2 Performing Settling Defendant(s) and any person for performance of Work on or relating to the  
3 Site, including, but not limited to, claims on account of construction delays.

4 67. No later than 15 days before commencing any on-site Work, each of the  
5 Performing Settling Defendants shall secure, and shall maintain until the first anniversary of  
6 EPA's Certification of Completion pursuant to Section XIV (Certification of Completion),  
7 comprehensive general liability insurance with limits of 2 million dollars, combined single limit,  
8 and automobile liability insurance with limits of 1 million dollars, combined single limit, naming  
9 the United States and DTSC as additional insureds. In addition, for the duration of this Consent  
10 Decree, each of the Performing Settling Defendants shall satisfy, or shall ensure that their  
11 respective contractors or subcontractors satisfy, all applicable laws and regulations regarding the  
12 provision of worker's compensation insurance for all persons performing the Work on behalf of  
13 the respective Performing Settling Defendant in furtherance of this Consent Decree. Prior to  
14 commencement of the Work under this Consent Decree, each of the Performing Settling  
15 Defendants shall provide to EPA certificates of such insurance and a copy of each insurance  
16 policy. Each of the Performing Settling Defendants shall resubmit such certificates and copies of  
17 policies each year on the anniversary of the Effective Date. If a Performing Settling Defendant  
18 demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains  
19 insurance equivalent to that described above, or insurance covering the same risks but in a lesser  
20 amount, then, with respect to that contractor or subcontractor, such Performing Settling  
21 Defendant need provide only that portion of the insurance described above which is not  
22 maintained by the contractor or subcontractor.

23 XVIII. FORCE MAJEURE

24 68. "Force Majeure," for purposes of this Consent Decree, is defined as any event  
25 arising from causes beyond the control of the Settling Defendants, of any entity controlled by  
26 Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the  
27 performance of any obligation under this Consent Decree despite Settling Defendants' best  
28 efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best

1 efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force  
2 Majeure event and best efforts to address the effects of any potential Force Majeure event (1) as  
3 it is occurring and (2) following the potential Force Majeure event, such that the delay is  
4 minimized to the greatest extent possible. "Force Majeure" does not include financial inability to  
5 complete the Work or a failure to attain the Performance Standards. Only the East Side  
6 Performing Settling Defendant(s) may invoke the provisions of this Section with respect to the  
7 East Side Work; and only the West Side Performing Settling Defendant may invoke the  
8 provisions of this Section with respect to the West Side Work.

9       69. If any event occurs or has occurred that may delay the performance of any  
10 obligation under this Consent Decree, whether or not caused by a Force Majeure event, the  
11 Settling Defendant responsible for performing such obligation shall notify orally EPA's Project  
12 Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both  
13 of EPA's designated representatives are unavailable, the Director of the Hazardous Waste  
14 Management Division, EPA Region 9, within 48 hours of when Settling Defendants first knew  
15 that the event might cause a delay. Within 14 days thereafter, such Settling Defendant shall  
16 provide in writing to EPA an explanation and description of the reasons for the delay; the  
17 anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the  
18 delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay  
19 or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a Force  
20 Majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion  
21 of the Settling Defendant, such event may cause or contribute to an endangerment to public  
22 health, welfare or the environment. The Settling Defendant shall include with any notice all  
23 available documentation supporting their claim that the delay was attributable to a Force Majeure  
24 event. Failure to comply with the above requirements shall preclude the Settling Defendant from  
25 asserting any claim of Force Majeure for that event for the period of time of such failure to  
26 comply, and for any additional delay caused by such failure. The Settling Defendant shall be  
27 deemed to know of any circumstance of which Settling Defendant, any entity controlled by  
28 Settling Defendant, or Settling Defendant's contractors knew or should reasonably have known.

1           70.     If EPA agrees that the delay or anticipated delay is attributable to a Force Majeure  
2 event, the time for performance of the obligations under this Consent Decree that are affected by  
3 the Force Majeure event will be extended by EPA for such time as is necessary to complete those  
4 obligations. An extension of the time for performance of the obligations affected by the Force  
5 Majeure event shall not, of itself, extend the time for performance of any other obligation. If  
6 EPA does not agree that the delay or anticipated delay has been or will be caused by a Force  
7 Majeure event, EPA will notify the Settling Defendant in writing of its decision. If EPA agrees  
8 that the delay is attributable to a Force Majeure event, EPA will notify the Settling Defendant in  
9 writing of the length of the extension, if any, for performance of the obligations affected by the  
10 Force Majeure event.

11           71.     If any Settling Defendant elects to invoke the dispute resolution procedures set  
12 forth in Section XIX (Dispute Resolution), it shall do so no later than 15 days after receipt of  
13 EPA's notice of its Force Majeure decision. In any such proceeding, the Settling Defendant shall  
14 have the burden of demonstrating by a preponderance of the evidence that the delay or  
15 anticipated delay has been or will be caused by a Force Majeure event, that the duration of the  
16 delay or the extension sought was or will be warranted under the circumstances, that best efforts  
17 were exercised to avoid and mitigate the effects of the delay, and that the Settling Defendant  
18 complied with the requirements of Paragraphs 68 and 69, above. If the Settling Defendant  
19 carries this burden, the delay at issue shall be deemed not to be a violation by the Settling  
20 Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

21                               XIX. DISPUTE RESOLUTION

22           72.     Unless otherwise expressly provided for in this Consent Decree, the dispute  
23 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising  
24 under or with respect to this Consent Decree. However, the procedures set forth in this Section  
25 shall not apply to actions by the United States to enforce the obligations of any Settling  
26 Defendant that has not been disputed in accordance with this Section. Only the East Side  
27 Performing Settling Defendant(s) may invoke the provisions of this Section with respect to the  
28 East Side Work; and only the West Side Performing Settling Defendant may invoke the

1 provisions of this Section with respect to the West Side Work.

2 73. Any dispute which arises under or with respect to this Consent Decree shall in the  
3 first instance be the subject of informal negotiations between the parties to the dispute. The  
4 period for informal negotiations shall not exceed 30 days from the time the dispute arises, unless  
5 it is modified by written agreement of the parties to the dispute. The dispute shall be considered  
6 to have arisen when one party sends the other parties a written Notice of Dispute.

7 74. Statements of Position.

8 a. In the event that the parties cannot resolve a dispute by informal  
9 negotiations under the preceding Paragraph, then the position advanced by EPA shall be  
10 considered binding unless, within 21 days after the conclusion of the informal negotiation period,  
11 the Settling Defendant involved in the dispute invokes the formal dispute resolution procedures  
12 of this Section by serving on the United States a written Statement of Position on the matter in  
13 dispute, including, but not limited to, any factual data, analysis or opinion supporting that  
14 position and any supporting documentation relied upon by the Settling Defendant. The  
15 Statement of Position shall specify the Settling Defendant's position as to whether formal dispute  
16 resolution should proceed under Paragraph 75 or Paragraph 76.

17 b. Within 21 after receipt of the Settling Defendant's Statement of Position,  
18 EPA will serve on the Settling Defendant its Statement of Position, including, but not limited to,  
19 any factual data, analysis, or opinion supporting that position and all supporting documentation  
20 relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal  
21 dispute resolution should proceed under Paragraph 75 or 76. Within 10 days after receipt of  
22 EPA's Statement of Position, the Settling Defendant(s) may submit a Reply.

23 c. If there is disagreement between EPA and the Settling Defendant as to  
24 whether dispute resolution should proceed under Paragraph 75 or 76, the parties to the dispute  
25 shall follow the procedures set forth in the paragraph determined by EPA to be applicable.  
26 However, if the Settling Defendant ultimately appeals to the Court to resolve the dispute, the  
27 Court shall determine which paragraph is applicable in accordance with the standards of  
28 applicability set forth in Paragraphs 75 and 76.

1           75.     Formal dispute resolution for disputes pertaining to the selection or adequacy of  
2 any response action and all other disputes that are accorded review on the administrative record  
3 under applicable principles of administrative law shall be conducted pursuant to the procedures  
4 set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action  
5 includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to  
6 implement plans, or any other items requiring approval by EPA under this Consent Decree; and  
7 (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree.  
8 Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants  
9 regarding the validity of the provisions of the IROD as supplemented by the ESD.

10           a.     An administrative record of the dispute shall be maintained by EPA and  
11 shall contain all Statements of Position, including supporting documentation, submitted pursuant  
12 to this Section. Where appropriate, EPA may allow submission of supplemental Statements of  
13 Position by the parties to the dispute.

14           b.     The Director of the Waste Management Division, EPA Region 9, will  
15 issue a final administrative decision resolving the dispute based on the administrative record  
16 described in the preceding sub-paragraph. This decision shall be binding upon the Settling  
17 Defendant involved in the dispute, subject only to the right to seek judicial review pursuant to the  
18 next two sub-paragraphs.

19           c.     Any administrative decision made by EPA pursuant to the preceding sub-  
20 paragraph shall be reviewable by this Court, provided that a motion for judicial review of the  
21 decision is filed by the Settling Defendant with the Court and served on all parties within 10 days  
22 of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the  
23 efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within  
24 which the dispute must be resolved to ensure orderly implementation of this Consent Decree.  
25 The United States may file a response to Settling Defendant's motion.

26           d.     In proceedings on any dispute governed by this Paragraph, the Settling  
27 Defendant involved shall have the burden of demonstrating that the decision of the Waste  
28 Management Division Director is arbitrary and capricious or otherwise not in accordance with

1 law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant  
2 to sub-paragraph a of this Paragraph.

3 76. Formal dispute resolution for disputes that neither pertain to the selection or  
4 adequacy of any response action nor are otherwise accorded review on the administrative record  
5 under applicable principles of administrative law, shall be governed by this Paragraph.

6 a. Following receipt of a Settling Defendant's Statement of Position  
7 submitted pursuant to Paragraph 74, the Director of the Waste Management Division, EPA  
8 Region 9 will issue a final decision resolving the dispute. The Waste Management Division  
9 Director's decision shall be binding on the Settling Defendant unless, within 10 days of receipt of  
10 the decision, the Settling Defendant files with the Court and serves on the parties a motion for  
11 judicial review of the decision setting forth the matter in dispute, the efforts made by the parties  
12 to resolve it, the relief requested, and the schedule, if any, within which the dispute must be  
13 resolved to ensure orderly implementation of the Consent Decree. The United States may file a  
14 response to the Settling Defendant's motion.

15 b. Notwithstanding Paragraph N of Section I (Background) of this Consent  
16 Decree, judicial review of any dispute governed by this Paragraph shall be governed by  
17 applicable principles of law.

18 77. The invocation of formal dispute resolution procedures under this Section shall  
19 not extend, postpone or affect in any way any obligation of the Settling Defendants under this  
20 Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated  
21 penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed  
22 pending resolution of the dispute as provided in Paragraph 86. Notwithstanding the stay of  
23 payment, stipulated penalties shall accrue from the first day of noncompliance with any  
24 applicable provision of this Consent Decree. In the event that the Settling Defendant involved  
25 does not prevail on the disputed issue, stipulated penalties may be assessed and shall be paid as  
26 provided in Section XX (Stipulated Penalties).

27 XX. Stipulated Penalties

28 78. Performing Settling Defendants shall be liable for stipulated penalties in the

1 amounts set forth in Paragraphs 79 and 80 to the United States for failure to comply with the  
2 requirements of this Consent Decree specified below, unless excused under Section XVIII (Force  
3 Majeure). "Compliance" by Performing Settling Defendants shall include completion of the  
4 activities under this Consent Decree or any work plan or other plan approved under this Consent  
5 Decree identified below in accordance with all applicable requirements of law, this Consent  
6 Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent  
7 Decree and within the specified time schedules established by and approved under this Consent  
8 Decree. Only the East Side Performing Settling Defendant(s) shall be responsible for stipulated  
9 penalties relating to the East Side Work; and only the West Side Performing Settling Defendant  
10 shall be responsible for stipulated penalties relating to the West Side Work.

11 79. Stipulated Penalty Amounts - Work.

12 a. The following stipulated penalties shall accrue per violation per day for  
13 any noncompliance identified in Subparagraph b:

| 14 | <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|----|--------------------------------------|--------------------------------|
| 15 | \$1,500                              | 1st through 14th day           |
| 16 | \$2,500                              | 15th through 30th day          |
| 17 | \$3,500                              | 31st day and beyond            |

18 b. Compliance Milestones. Failure to submit or perform any of the following  
19 within the specified time schedule provided for in this Decree shall incur the stipulated penalties  
20 set out in Subparagraph a.

- 21 i. Compliance and Sentinel Well Network Plan
- 22 ii. Draft and Final RD/RA Work Plan
- 23 iii. Preliminary Remedial Design
- 24 iv. Pre-final Remedial Design
- 25 v. Final Remedial Design
- 26 vi. Initiation of Construction of Remedial Action
- 27 vii. Remedial Action Construction Report
- 28 viii. Interim Remedial Action Report

- ix. Performance Evaluation Reports
- x. Non-compliance Notification
- xi. Failure to make timely payments for Past or Future Response Costs of the United States
- xi. Failure to make timely payments for Past or Future Response Costs of DTSC.

80. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents.

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--------------------------------------|--------------------------------|
| \$1,500                              | 1st through 14th day           |
| \$2,500                              | 15th through 30th day          |
| \$3,500                              | 31st day and beyond            |

81. In the event that EPA assumes performance of a portion or all of the East Side or West Side Work pursuant to Paragraph 95 ("Work Takeover") of Section XXI (Covenants Not to Sue by Plaintiffs), the East Side or West Side Performing Settling Defendants, as applicable, shall be liable for a stipulated penalty in the amount of \$3.5 million or twice the cost of the remainder of the East Side or West Side Work (as applicable), whichever is less.

82. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies the respective Performing Settling Defendant of any deficiency; (2) with respect to a decision by the Director of the Waste Management Division, EPA Region 9, under Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that such Performing Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final



1 decision regarding such dispute; or (3) with respect to judicial review by this Court of any  
2 dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st  
3 day after the Court's receipt of the final submission regarding the dispute until the date that the  
4 Court issues a final decision regarding such dispute. Nothing herein shall prevent the  
5 simultaneous accrual of separate penalties for separate violations of this Consent Decree.

6 83. Following EPA's determination that a Performing Settling Defendant has failed to  
7 comply with a requirement of this Consent Decree, EPA may give such Performing Settling  
8 Defendant written notification of the same and describe the noncompliance. EPA may send the  
9 Performing Settling Defendant a written demand for the payment of the penalties. However,  
10 penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has  
11 notified the Performing Settling Defendant of a violation.

12 84. All penalties accruing under this Section shall be due and payable to the United  
13 States within 30 days of the Performing Settling Defendant's receipt from EPA of a demand for  
14 payment of the penalties, unless such Performing Settling Defendant invokes the Dispute  
15 Resolution procedures under Section XIX (Dispute Resolution). All payments to the United  
16 States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA  
17 Hazardous Substances Superfund," shall be mailed to

18 EPA Hazardous Substances Superfund  
19 US EPA  
20 Region 9  
21 Attn: Superfund Accounting  
22 P.O. Box 360863M  
23 Pittsburgh, PA 15251.

24 shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and  
25 Site/Spill ID # 097B, the DOJ Case Number 90-11-2-354/3, and the name and address of the  
26 party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying  
27 transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and  
28 Submissions). However, any penalties accruing under this Section for Settling Defendants'  
failures to pay DTSC Past Response Costs or DTSC Future Response Costs shall be due and  
payable to DTSC, pursuant to the payment terms set forth in Paragraph 54.h.

85. The payment of penalties shall not alter in any way Performing Settling

1 Defendants' obligation to complete the performance of the Work required under this Consent  
2 Decree.

3 86. Penalties shall continue to accrue as provided in Paragraph 82 during any dispute  
4 resolution period, but need not be paid until the following:

5 a. If the dispute is resolved by agreement or by a decision of EPA that is not  
6 appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15  
7 days of the agreement or the receipt of EPA's decision or order;

8 b. If the dispute is appealed to this Court and the United States prevails in  
9 whole or in part, the Performing Settling Defendant filing such appeal shall pay all accrued  
10 penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's  
11 decision or order, except as provided in Subparagraph c below;

12 c. If the District Court's decision is appealed by any Party, the Performing  
13 Settling Defendant involved in the appeal shall pay all accrued penalties determined by the  
14 District Court to be owing to the United States into an interest-bearing escrow account within 60  
15 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they  
16 continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court  
17 decision, the escrow agent shall pay the balance of the account to EPA or to the Performing  
18 Settling Defendant to the extent that they prevail.

19 87. If a Performing Settling Defendant fails to pay stipulated penalties when due, the  
20 United States may institute proceedings to collect the penalties, as well as interest. The  
21 Performing Settling Defendant shall pay Interest on the unpaid balance, which shall begin to  
22 accrue on the date of demand made pursuant to Paragraph 84.

23 88. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in  
24 any way limiting the ability of the United States to seek any other remedies or sanctions  
25 available by virtue of Performing Settling Defendants' violation of this Decree or of the statutes  
26 and regulations upon which it is based, including, but not limited to, penalties pursuant to  
27 Section 122(l) of CERCLA, provided, however, that the United States shall not seek civil  
28 penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty

1 is provided herein, except in the case of a willful violation of the Consent Decree.

2 89. Notwithstanding any other provision of this Section, the United States may, in its  
3 unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to  
4 this Consent Decree.

5 XXI. COVENANTS NOT TO SUE BY PLAINTIFFS

6 90. In consideration of the actions that will be performed and the payments that will  
7 be made by the Settling Defendants under the terms of the Consent Decree, and except as  
8 specifically provided in Paragraph 94 ("General reservations of rights") of this Section, the  
9 United States covenants not to sue or to take administrative action against Settling Defendants,  
10 other than the Ability-to-Pay Settling Defendants, pursuant to Sections 106 and 107(a) of  
11 CERCLA, 42 U.S.C. §§ 9606 and 9607(a), or Section 7003 of RCRA, 42 U.S.C. § 6973 for  
12 performance of the Work and for recovery of Past Response Costs, Future Response Costs and  
13 future Basin-Wide Response Costs. These covenants not to sue shall take effect for Performing  
14 Settling Defendant(s) upon receipt by EPA of the payments required of them by Paragraph 54  
15 a.i) and 54 b.i) of Section XVI (Payments for Response Costs). These covenants not to sue shall  
16 take effect for each Contributing Settling Defendant upon EPA's receipt of notification, pursuant  
17 to Paragraph 6 c., that such Contributing Settling Defendant has discharged its payment  
18 obligations pursuant to this Decree. With respect to each Settling Defendant, these covenants not  
19 to sue are conditioned upon the satisfactory performance by that Settling Defendant of its  
20 obligations under this Consent Decree, including, for each Performing Settling Defendant, its  
21 obligations under Paragraphs 54 a.ii) and a.iii) or 54 b.ii) and b.iii) as applicable. These  
22 covenants not to sue extend only to Settling Defendants (other than the Ability-to-Pay Settling  
23 Defendants) and do not extend to any other person.

24 91. Except as specifically provided in this Paragraph, the United States covenants not  
25 to sue or to take administrative action against the Ability-to-Pay Settling Defendants pursuant to  
26 Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site.  
27 With respect to present and future liability, this covenant shall take effect upon receipt by DOJ of  
28 the payments required by Paragraph 54 of Section XVI (Payments for Response Costs). This

1 covenant not to sue is conditioned upon the satisfactory performance by Ability-to-Pay Settling  
2 Defendants of their obligations under this Consent Decree including but not limited to, payment  
3 of all amounts due by them under Section XVI (Payments for Response Costs), and any amounts  
4 due under Section XX (Stipulated Penalties). This covenant not to sue is also conditioned upon  
5 the veracity and completeness of any financial information previously provided to EPA by  
6 Ability-to-Pay Settling Defendants. If any such financial information is subsequently determined  
7 by EPA to be false or, in any material respect, inaccurate, the submitting Ability-to-Pay Settling  
8 Defendant shall forfeit all payments made pursuant to this Consent Decree and this covenant not  
9 to sue and the contribution protection shall be null and void. Such forfeiture shall not constitute  
10 liquidated damages and shall not in any way foreclose the United States' right to pursue any  
11 other causes of action arising from Ability-to-Pay Settling Defendant's false or materially  
12 inaccurate information. This covenant not to sue extends only to Ability-to-Pay Settling  
13 Defendants and does not extend to any other person. Safety-Kleen Systems, Inc., has advised  
14 EPA that it is in the process of reorganization under Chapter 11 of the Bankruptcy Code.

15 92. Covenant Not to Sue by DTSC. Except as specifically provided in Paragraph 94  
16 ("General reservations of rights") of this Section, DTSC covenants not to sue Settling  
17 Defendants, and each of them, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and  
18 Section 7003 of the Resource Conservation and Recovery Act and comparable state laws,  
19 including but not limited to, the California Civil Code § 3494, and California Health and Safety  
20 Code §§ 25300 *et seq.*, to recover DTSC Past Response Costs, DTSC Future Response Costs or  
21 future Basin-wide Response Costs. This covenant not to sue shall take effect as to the Settling  
22 Defendants upon payment to DTSC of all payments required from Performing Settling  
23 Defendants by Paragraph 54h (Payment of Past Response Costs to DTSC). The covenant not to  
24 sue granted to each Settling Defendant is conditioned upon the satisfactory performance by that  
25 Settling Defendant of its obligations under this Consent Decree. This covenant not to sue  
26 extends only to Settling Defendants and does not extend to any other person. In the event of a  
27 breach by a Settling Defendant of its obligations under this Consent Decree, the covenant shall  
28 remain in effect as to the other Settling Defendants.

1 93. Intentionally Blank.

2 94. General reservations of rights. The United States and DTSC reserve, and this  
3 Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all  
4 matters not expressly included within Plaintiffs' covenant not to sue. Notwithstanding any other  
5 provision of this Consent Decree, the United States and DTSC reserve all rights against  
6 Performing Settling Defendant(s), and all rights other than those set out in subsections (e) and (f)  
7 against Contributing Settling Defendants and Ability-to-Pay Settling Defendants, with respect to:

8 a. claims against a Settling Defendant based on a failure by such Settling  
9 Defendant to meet a requirement of such Settling Defendant under this Consent Decree;

10 b. liability arising from the past, present, or future disposal, release, or threat  
11 of release of Waste Material outside of the Site;

12 c. liability for damages for injury to, destruction of, or loss of natural  
13 resources, and for the costs of any natural resource damage assessments;

14 d. criminal liability;

15 e. liability for violations of federal or state law which occur during or after  
16 implementation of the Remedial Action; and

17 f. liability, prior to Certification of Completion of the Remedial Action, for  
18 additional response actions that EPA determines are necessary to achieve Performance  
19 Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the  
20 SOW or Related Work Plans);

21 g. liability for any other operable units of the San Gabriel Valley Superfund  
22 Site.

23 95. Work Takeover In the event EPA determines that Performing Settling  
24 Defendant(s) have ceased implementation of any portion of the East Side or West Side Work, are  
25 seriously or repeatedly deficient or late in their respective performance of the Work, or are  
26 implementing the Work in a manner which may cause an endangerment to human health or the  
27 environment, EPA may assume the performance of all or any portions of the East Side or West  
28 Work as EPA determines necessary. Performing Settling Defendant(s) may invoke the

1 procedures set forth in Section XIX (Dispute Resolution), Paragraph 75, to dispute EPA's  
2 determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the  
3 United States in performing the Work pursuant to this Paragraph, which are not reimbursed  
4 through the financial assurance mechanism(s) established by the relevant Performing Settling  
5 Defendant pursuant to Paragraph 46, shall be considered Future Response Costs that Performing  
6 Settling Defendant(s) shall pay pursuant to Section XVI (Payment for Response Costs).

7 96. Notwithstanding any other provision of this Consent Decree, the United States  
8 and DTSC retain all authority and reserve all rights to take any and all response actions  
9 authorized by law.

10 XXII. COVENANTS BY SETTLING DEFENDANTS

11 97. Covenant Not to Sue. Subject to the reservations in the following Paragraph,  
12 Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of  
13 action against the United States or DTSC with respect to the East Side Work and the West Side  
14 Work, past response actions, Past Response Costs and Future Response Costs as defined herein,  
15 or this Consent Decree, including, but not limited to:

16 a. any direct or indirect claim for reimbursement from the Hazardous  
17 Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507)  
18 through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

19 b. any claims against the United States, including any department, agency or  
20 instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or

21 c. any claims arising out of response actions at or in connection with the Site,  
22 including any claim under the United States Constitution, the California Constitution, the Tucker  
23 Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at  
24 common law.

25 Except as provided in Paragraph 106 (waiver of Claim-Splitting Defenses), these  
26 covenants not to sue shall not apply in the event that the United States or DTSC brings a cause of  
27 action or issues an order pursuant to the reservations set forth in paragraph 94 (b) - (d) or 94 (g),  
28 but only to the extent that Settling Defendants' claims arise from the same response action,

1 response costs, or damages that the United States or DTSC is seeking pursuant to the applicable  
2 reservation.

3 98. The Settling Defendants reserve, and this Consent Decree is without prejudice to,  
4 claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the  
5 United States Code, for money damages for injury or loss of property or personal injury or death  
6 caused by the negligent or wrongful act or omission of any employee of the United States while  
7 acting within the scope of his office or employment under circumstances where the United  
8 States, if a private person, would be liable to the claimant in accordance with the law of the place  
9 where the act or omission occurred. However, any such claim shall not include a claim for any  
10 damages caused, in whole or in part, by the act or omission of any person, including any  
11 contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall  
12 any such claim include a claim based on EPA's selection of response actions, or the oversight or  
13 approval of the Settling Defendants' plans or activities. The foregoing applies only to claims  
14 which are brought pursuant to any statute other than CERCLA and for which the waiver of  
15 sovereign immunity is found in a statute other than CERCLA.

16 99. Nothing in this Consent Decree shall be deemed to constitute preauthorization of  
17 a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.  
18 § 300.700(d).

19 100. Intentionally Blank.

20 101. Each Settling Defendant covenants not to sue any other Settling Defendant with  
21 respect to the East Side Work and the West Side Work, past response actions, Past Response  
22 Costs, DTSC Past Response Costs, Future Response Costs, DTSC Future Response Costs, and  
23 future Basin-Wide Response Costs, as defined herein, or this Consent Decree. Settling  
24 Defendants Hermetic Seal Corporation, Clayton Industries, Plato Products, Inc., and the Adams  
25 Family Trust specifically release any and all causes of action assigned to them by Southern  
26 California Water Company against any and all other Settling Defendants.

27 XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

28 102. Nothing in this Consent Decree shall be construed to create any rights in, or grant

1 any cause of action to, any person not a Party to this Consent Decree. The preceding sentence  
2 shall not be construed to waive or nullify any rights that any person not a signatory to this decree  
3 may have under applicable law. Plaintiffs and each Settling Defendant expressly reserve any and  
4 all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and  
5 causes of action which each of them may have with respect to any matter, transaction, or  
6 occurrence relating in any way to the Site against any person other than Plaintiffs and/or Settling  
7 Defendants.

8 103. The Parties agree, and by entering this Consent Decree this Court finds, that the  
9 Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions  
10 or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters  
11 addressed in this Consent Decree. The "matters addressed" in this Consent Decree are past  
12 response actions, Past Response Costs, Future Response Costs, and future Basin-Wide Response  
13 Costs, the East Side Work and West Side Work, and all work required in the IROD, the ESD and  
14 the SOW and any further response required under Section VIII, Paragraph 20 (Performing  
15 Settling Defendant(s)' Obligation to Perform Further Response Actions), and DTSC Past  
16 Response Costs and DTSC Future Response Costs. The parties hereto intend that this settlement  
17 will afford each Settling Defendant full protection against any contribution claims relating to the  
18 matters addressed in this Consent Decree.

19 104. East Side Performing Defendants retain all contribution rights against NavCom  
20 Defense Electronics, Inc., Ernest Jarvis, and Hyrum Jarvis. West Side Performing Defendant  
21 retains all contribution rights against Crown City Plating Company, Inc. NavCom, the Jarvis  
22 Brothers and Crown City are not Settling Defendants under this Consent Decree.

23 105. The Settling Defendants agree that with respect to any suit or claim for  
24 contribution brought by them for matters addressed in this Consent Decree they will notify the  
25 United States and DTSC in writing no later than 30 days prior to the initiation of such suit or  
26 claim.

27 106. The Settling Defendants also agree that with respect to any suit or claim for  
28 contribution brought against them for matters addressed in this Consent Decree they will notify



1 in writing the United States and DTSC within 30 days of service of the complaint on them. In  
2 addition, Settling Defendants shall notify the United States and DTSC within 30 days of service  
3 or receipt of any Motion for Summary Judgment and within 30 days of receipt of any order from  
4 a court setting a case for trial.

5 107. In any subsequent administrative or judicial proceeding initiated by the United  
6 States or DTSC for injunctive relief, recovery of response costs, or other appropriate relief  
7 relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or  
8 claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion,  
9 claim-splitting, or other defenses based upon any contention that the claims raised by the United  
10 States or DTSC in the subsequent proceeding were or should have been brought in the instant  
11 case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants  
12 not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiffs).

13 XXIV. ACCESS TO INFORMATION

14 108. Settling Defendants shall provide to EPA, upon request, and within a reasonable  
15 time, copies of all documents and information within their possession or control or that of their  
16 contractors or agents relating to activities at the Site or to the implementation of this Consent  
17 Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests,  
18 trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or  
19 information related to the Work. Settling Defendants shall also make available to EPA, for  
20 purposes of investigation, information gathering, or testimony, their employees, agents, or  
21 representatives with knowledge of relevant facts concerning the performance of the Work.

22 109. Business Confidential and Privileged Documents.

23 a. Settling Defendants may assert business confidentiality claims covering  
24 part or all of the documents or information submitted to Plaintiffs under this Consent Decree to  
25 the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C.  
26 § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential  
27 by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of  
28 confidentiality accompanies documents or information when they are submitted to EPA, or if

1 EPA has notified Settling Defendants that the documents or information are not confidential  
2 under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public  
3 may be given access to such documents or information without further notice to Settling  
4 Defendants.

5           b.       The Settling Defendants may assert that certain documents, records and  
6 other information are privileged under the attorney-client privilege or any other privilege  
7 recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing  
8 documents, they shall provide the Plaintiffs with the following: (1) the title of the document,  
9 record, or information; (2) the date of the document, record, or information; (3) the name and  
10 title of the author of the document, record, or information; (4) the name and title of each  
11 addressee and recipient; (5) a description of the contents of the document, record, or information;  
12 and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other  
13 information created or generated pursuant to the requirements of the Consent Decree shall be  
14 withheld on the grounds that they are privileged.

15           110.   No claim of confidentiality shall be made with respect to any data, including, but  
16 not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or  
17 engineering data, or any other documents or information evidencing conditions at or around the  
18 Site.

#### 19                                   XXV. RETENTION OF RECORDS

20           111.       Until 10 years after the Performing Settling Defendants' receipt of EPA's  
21 notification pursuant to Section XIV (Certification of Completion of the Work), each Settling  
22 Defendant shall preserve and retain all non-identical copies of records and documents (including  
23 records or documents in electronic form) now in its possession or control or which come into its  
24 possession or control that relate in any manner to its liability under CERCLA with respect to the  
25 Site; provided, however, that Settling Defendants shall not be required to retain documents and  
26 records that relate to the liability of any other person under CERCLA with respect to the Site,  
27 which were obtained from governmental agencies or received from other Settling Defendants or  
28 non-settling PRPs in the course of allocation negotiations between and among such parties. Each

1 Performing Settling Defendant must also retain, and instruct its contractors and agents to  
2 preserve, for the same period of time specified above all non-identical copies of the last draft or  
3 final version of any documents or records (including documents or records in electronic form)  
4 now in its possession or control or which come into its possession or control that relate in any  
5 manner to the performance of the Work, provided, however, that each Performing Settling  
6 Defendant (and its contractors and agents) must retain, in addition, copies of all data generated  
7 during the performance of the Work and not contained in the aforementioned documents required  
8 to be retained. Each of the above record retention requirements shall apply regardless of any  
9 corporate retention policy to the contrary.

10 112. At the conclusion of this document retention period, Settling Defendants shall  
11 notify the United States at least 90 days prior to the destruction of any such records or  
12 documents, and, upon request by the United States, Settling Defendants shall deliver any such  
13 records or documents to EPA. The Settling Defendants may assert that certain documents,  
14 records and other information are privileged under the attorney-client privilege or any other  
15 privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall  
16 provide the Plaintiffs with the following: (1) the title of the document, record, or information;  
17 (2) the date of the document, record, or information; (3) the name and title of the author of the  
18 document, record, or information; (4) the name and title of each addressee and recipient; (5) a  
19 description of the subject of the document, record, or information; and (6) the privilege asserted  
20 by Settling Defendants. However, no documents, reports or other information created or  
21 generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds  
22 that they are privileged.

23 113. Each Settling Defendant hereby certifies individually that, to the best of its  
24 knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed  
25 or otherwise disposed of any records, documents or other information (other than identical  
26 copies) relating to its potential liability regarding the Site since notification of potential liability  
27 by the United States or DTSC or the filing of suit against it regarding the Site and that it has fully  
28 complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of

1 CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

2 114. The Ability-to-Pay Settling Defendants hereby certify that, to the best of their  
3 knowledge and belief, after thorough inquiry, they have submitted to EPA financial information  
4 that fairly, accurately, and materially sets forth their financial circumstances, and that those  
5 circumstances have not materially changed between the time the financial information was  
6 submitted to EPA and the time Ability-to-Pay Settling Defendants execute this Consent Decree.  
7 Safety-Kleen Systems, Inc., has advised EPA that it is in the process of reorganization under  
8 Chapter 11 of the Bankruptcy Code.

9 XXVI. NOTICES AND SUBMISSIONS

10 115. Whenever, under the terms of this Consent Decree, written notice is required to be  
11 given or a report or other document is required to be sent by one Party to another, it shall be  
12 directed to the individuals at the addresses listed in Appendix G, unless those individuals or their  
13 successors give notice of a change to the other Parties in writing. All notices and submissions  
14 shall be considered effective upon receipt, unless otherwise provided. Written notice as specified  
15 herein shall constitute complete satisfaction of any written notice requirement of the Consent  
16 Decree with respect to the United States, EPA, DTSC, and the Settling Defendants, respectively.

17 XXVII. EFFECTIVE DATE

18 116. The effective date of this Consent Decree shall be the date upon which this  
19 Consent Decree is entered by the Court, except as otherwise provided herein.

20 XXVIII. RETENTION OF JURISDICTION

21 117. This Court retains jurisdiction over both the subject matter of this Consent Decree  
22 and the Settling Defendants for the duration of the performance of the terms and provisions of  
23 this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any  
24 time for such further order, direction, and relief as may be necessary or appropriate for the  
25 construction or modification of this Consent Decree, or to effectuate or enforce compliance with  
26 its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

27 XXIX. APPENDICES

28 118. The following appendices are incorporated into this Consent Decree:

1 "Appendix A" is the IROD.

2 "Appendix B" is the ESD.

3 "Appendix C" is the SOW-East Side.

4 "Appendix D" is the SOW-West Side.

5 "Appendix E" is the description and/or map of the Site.

6 "Appendix F" is the complete list of the Settling Defendants.

7 "Appendix G" is the list of Addresses for Notice pursuant to Section XXVI (Notices and  
8 Submissions) and for Service pursuant to Section XXXIII (Signatories/Service).

9 "Appendix H" is the list of Payment Obligations of Contributing Settling Defendants.

10 "Appendix I" is EPA's list of recipients of the special notice letters.

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### XXX. COMMUNITY RELATIONS

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119. Performing Settling Defendants shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Performing Settling Defendants under the Plan. Performing Settling Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Performing Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

### XXXI. MODIFICATION

120. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and Performing Settling Defendant(s). All such modifications shall be made in writing.

121. Except as provided in Paragraph 14 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Performing Settling Defendant(s), and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United

1 States will provide DTSC with a reasonable opportunity to review and comment on the proposed  
2 modification. Modifications to the SOW that do not materially alter that document, or material  
3 modifications to the SOW that do not fundamentally alter the basic features of the selected  
4 remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii), may be made by written agreement  
5 between EPA, after providing DTSC with a reasonable opportunity to review and comment on  
6 the proposed modification, and Performing Settling Defendant(s).

7 122. Nothing in this Decree shall be deemed to alter the Court's power to enforce,  
8 supervise or approve modifications to this Consent Decree.

9 XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

10 123. This Consent Decree shall be lodged with the Court for a period of not less than  
11 thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of  
12 CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to  
13 withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or  
14 considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.  
15 Settling Defendants consent to the entry of this Consent Decree without further notice.

16 124. If for any reason the Court should decline to approve this Consent Decree in the  
17 form presented, this agreement is voidable at the sole discretion of any Party and the terms of the  
18 agreement may not be used as evidence in any litigation between the Parties.

19 XXXIII. SIGNATORIES/SERVICE

20 125. Each undersigned representative of a Settling Defendant to this Consent Decree  
21 and the Assistant Attorney General for the Environment and Natural Resources Division of the  
22 Department of Justice certifies that he or she is fully authorized to enter into the terms and  
23 conditions of this Consent Decree and to execute and legally bind such Party to this document.

24 126. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree  
25 by this Court or to challenge any provision of this Consent Decree unless the United States has  
26 notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

27 127. Each Settling Defendant shall identify, in Appendix G, the name, address and  
28 facsimile telephone number of an agent who is authorized to accept service of process by mail on

1 behalf of that Party with respect to all matters arising under or relating to this Consent Decree.  
2 Settling Defendants hereby agree to accept service in that manner and to waive the formal service  
3 requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local  
4 rules of this Court, including, but not limited to, service of a summons. The parties agree that  
5 Settling Defendants need not file an answer to the complaint in this action unless or until the  
6 court expressly declines to enter this Consent Decree.

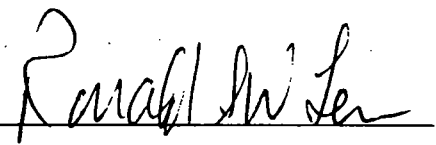
7 XXXIV. FINAL JUDGMENT

8 128. This Consent Decree and its appendices constitute the final, complete, and  
9 exclusive agreement and understanding among the parties with respect to the settlement  
10 embodied in the Consent Decree. The parties acknowledge that there are no representations,  
11 agreements or understandings relating to the settlement other than those expressly contained in  
12 this Consent Decree.

13 129. Upon approval and entry of this Consent Decree by the Court, this Consent  
14 Decree shall constitute a final judgment between and among the United States, DTSC, and the  
15 Settling Defendants. The Court finds that there is no just reason for delay and therefore enters  
16 this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

17  
18 SO ORDERED.

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20 DATED: April 16, 2004

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23 UNITED STATES DISTRICT JUDGE